

Section 504 COMPLIANCE ADVISOR

ROUTE TO	

Your Guide to Understanding and Administering Section 504

VOLUME 28, ISSUE 1

MARCH 2024

IN THIS ISSUE

Does limiting teen's gen ed electives constitute improper change in placement?	2
Adapt 504 accommodations to fluctuating needs of students with depression	3
Play it safe when parents revoke consent to 504 services	4
Don't wait for graduation to prepare Section 504 students for transition	5
Refocus 504 eligibility decision-making when law's requirements feel fuzzy	6
Try two-fold analysis in team meetings to address modality, liability of virtual instructors	7
Make careful determination to move 504-eligible student to IAES	8
5 steps to write a 504 plan	9
School vows to fix failure to provide child 504 classroom accommodations	10
Reporting 5-year-old's not attending school mandatory, not retaliatory	10
Delay in staff training thwarts teen from fully utilizing AT device at school	11
Staff shortage doesn't excuse 6-month delay of at-home parent training	11
Principal deters admission of child with IEP to afterschool program....	12

You're hired! Boil down essentials for onboarding campus 504 coordinators

The Section 504 coordinator title is generally given to the official who facilitates district efforts to comply with Section 504. 34 CFR 104.7(a) and 28 CFR 35.107(a). Every district with 15 or more employees should have one.

Districts aren't required to designate a coordinator at each school building. Doing so, however, could help ensure adherence to 504 requirements.

Building-level coordinators need comprehensive training and district support to achieve success in their role. Learn about critical steps to take during and after the hiring process for campus-level 504 coordinators.

Qualities you can't teach

When screening candidates for a 504 coordinator position, look for empathy, flexibility, and collaboration skills. If a candidate has those, specific knowledge about 504 can easily be taught, said Jason Ellis, assistant director of student services at Frisco Independent School District in Texas.

"Teachers have those characteristics. We can't teach empathy or flexibility, but we can teach everything else," he said.

The majority of a 504 building-level coordinator's role will be working with others, so classroom management and parent communication experience are also vital. Experience implementing 504 plans in the classroom is helpful, but all candidates should receive the same amount and type of 504 training, regardless of previous exposure.

"Even if someone has [some] experience, we still train them based on our district expectations," Ellis said.

Pool of candidates

Consider pulling from a pool of candidates who are screened at the district level. Ellis' district posts openings for 504 facilitators, interviews applicants, and places them in a pool. When individual schools have a need, they pull from the pool and provide campus-specific potential interview questions, Ellis said.

"[Since] school principals have so much going on, having that pool already screened for you is very beneficial," he said.

Across-board training

No matter what a 504 building-level coordinator's background is, the training they receive should be comprehensive, Ellis said. This includes training on the ins and outs of Section 504 regulations as they relate to public schools, district policies and procedures, discrimination law, and

(See **HIRED** on page 3)

Does limiting teen's gen ed electives constitute improper change in placement?

The IEP of a high schooler with an undisclosed disability identified an Arizona district's life skills program as the least restrictive environment. According to the IEP, the student would participate in the life skills program, "as well as one to two elective courses and physical education amongst his general education peers." A different section of the IEP stated that the student would be in the self-contained classroom for four out of the six class periods.

The district assigned the student to four self-contained classes and two general education elective courses. The parents disagreed with the school schedule because they believed the student was entitled to three general education elective courses under the IEP. After a reevaluation, the IEP team again determined that the student's LRE was the life skills program, in which he would spend less than 40 percent of the day in general education.

The parents filed a complaint with the Office for Civil Rights, contending, among other things, that the district unilaterally changed the student's placement when it assigned him to only two general education elective courses. Under Section 504, a district must generally conduct an evaluation before taking any action with respect to a student's initial placement or before any significant change in placement. *See* 34 CFR 104.35(a).

Did the district comply with Section 504 when it developed the student's schedule?

A. Yes, no change in placement occurred.

B. No, the student was entitled to enroll in three elective courses under the IEP.

C. No, the parents' schedule preferences took priority.

How the Office for Civil Rights found: A.

In *Tempe (AZ) Union High School District*, 123 LRP 33171 (OCR 04/14/23), OCR found insufficient evidence that an Arizona district improperly changed a high schooler's placement. The IEP stated that the student would be in a self-contained classroom for four out of six periods in the day and spend less than 40 percent of the school day in general education. The district complied with these provisions by assigning the student to two general education elective courses. Had the district enrolled the student in the three elective courses preferred by the parents, the student would have been in the general education setting for 50 percent of the day. This would have prevented the student from receiving all of the specialized services required by the IEP, OCR concluded. It also pointed out that the term "placement" refers to the student's educational program or setting and not the specific class schedule developed by the district.

B is incorrect. The district complied with the IEP by assigning the student to two general education elective courses.

C is incorrect. The parent's "desire to enroll the student in particular courses is not, itself, a placement decision," OCR highlighted.

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

SECTION 504 COMPLIANCE ADVISOR

Publisher:

Kenneth F. Kahn, Esq.

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



Copyright © 2024 LRP PUBLICATIONS

This publication is designed to provide accurate and authoritative information regarding the subject matter covered. It is provided with the understanding that the publisher and editor are not engaged in rendering legal counsel. If legal advice is required, the service of a competent professional should be sought.

Section 504 Compliance Advisor is published monthly by LRP Publications, 360 Hiatt Drive, Palm Beach Gardens, FL 33418. Subscription Rate: \$330 per year.

HIRED (continued from page 1)

legal pitfalls. At Ellis' district, two district-level coordinators provide training on Section 504 policies and processes and the relevant software system.

District-modeled expectations

As new 504 coordinators start in the position, it's important to facilitate and model expectations from a district perspective, Ellis said. This includes accompanying new facilitators to their first few 504 meetings. In addition to regular in-district trainings, consider weekly email communications to address reminders or concerns.

To help 504 facilitators find their way, create monthly check-ins to answer questions and gauge concerns over the caseload, Ellis said. Ensure that facilitators know where to find 504 documents, forms, and resources to do their jobs.

"At the end of the day, everybody has gone through the same training, so there's never a question of whether we taught them something," Ellis said.

Train coordinators on how 504 regulations relate to public schools, Ellis said. Be sure to cover grievance procedures, providing parents with a notice of rights, and answering questions related to rights under 504.

District-level support

Solid support at the district level enables a smooth transition process for 504 building-level coordinators. If a facilitator is struggling at the campus level, the district can offer guidance, Ellis said.

"To be a campus facilitator, you really depend on your district-level people for resources. Without those, you couldn't do your job," he said.

Having strong 504 policies and procedures in place should allow districts to pivot easily when proposed updated 504 regulations are released.

"We're nervous just like any other school district, but we're confident we'll be able to do it since we do have a designated person who does 504 on each campus," Ellis said. "That makes a huge difference." ■

Adapt 504 accommodations to fluctuating needs of students with depression

Finding the perfect fit for Section 504 accommodations for students with depression may require teams to make periodic adjustments.

Depression manifests differently in each student with a diagnosis. To effectively serve students eligible for services under Section 504, teams need data to understand each student's condition and develop accommodations that facilitate access to the curriculum.

Plan for readjustment and collaborate with staff to ensure students' 504 plans are implemented correctly. Consider these steps when selecting accommodations that work best for students with depression.

Understand how depression affects learning, daily functioning

Through the evaluation process, teams should understand the unique ways in which depression affects students' learning and daily functioning, said Ray Christner. Christner is a nationally certified school psychologist, licensed psychologist, and CEO and director of clinical and educational services for Cognitive Health Solutions LLC in Hanover, Pa.

"The school team must adopt a holistic and individualized approach when looking at accommodations. Start with a comprehensive evaluation of the student's specific needs, challenges, and strengths," he said.

Include relevant input and data from mental health professionals, educators, and the student's family as well. It's important to have an open dialogue with the student, valuing insights into what support mechanisms might be most beneficial, Christner said.

This data helps create a tailored plan that not only addresses academic challenges but also supports the student's overall well-being and success in school, he said.

Plan accommodations

Once the team gathers input from mental health professionals and knows how and when the student's depression manifests, members can plan appropriate accommodations, Christner said.

Based on academic records, performance, and observation of behavior in different settings, patterns might emerge regarding times of day that have been historically difficult for the student, he said. For example, if a student's symptoms surface when she gets home at the end of the day, this may make completing homework assignments difficult. Christner recommended using this data to fine-tune the accommodation.

He outlined common and less common accommodations that teams might include in a 504 plan for students with depression.

504 accommodations for students with depression	
If you tried this...	Consider an alternative...
Allowing extended time to complete work due to difficulties in concentration or motivation.	Shortening the school day to accommodate energy levels and concentration difficulties.
Adjusting attendance requirements due to fluctuations in depressive episodes.	Allocating specific days off for mental health without academic penalty.
Reducing the quantity or altering the nature of homework to make it more manageable.	Allowing the student to attend classes or complete work remotely, especially at times when depressive episodes are high.
Providing a peer notetaker or access to lecture notes.	Adjusting the grading criteria to account for the impact of depression on academic performance.
Providing a quiet environment with minimal distraction for tests and assignments.	
Permitting 5- to 10-minute breaks during class to manage mood, anxiety, or fatigue.	Developing a personalized wellness plan for school that includes strategies for managing a student's depression during the school day. This can include prevention strategies and direct interventions.
Providing access to school counselors or mental health professionals in school.	Facilitating access to groups for students with similar challenges. For adolescents, consider the Coping with Stress Program by Clarke, Lewinsohn, and Hops.

Readjust plan

Section 504 teams should remember that because depression is a fluctuating disorder and often occurs in episodes, accommodations must be flexible, Christner said.

Once a 504 plan is developed, ensure regular follow-up and adjustment, he said. "These are crucial to determining the effectiveness of accommodations and addressing needs as they might change over time."

Collaborate with gen ed teachers

To achieve the "best fit" for accommodations, strive for a collaborative and informed process, Christner said. This means aligning efforts with those of general education teachers who implement accommodations

for students with depression.

Christner provided key recommendations for school staff:

1. Familiarize yourself with the general impacts of depression (the condition involves more than feeling sad or moody).
2. Provide effective support through collaboration and teamwork; including the student is vital.
3. Be diligent in implementing accommodations once they are developed.
4. Foster open communication with the student that is empathetic, inclusive, and solution-oriented rather than punitive or judgmental.
5. Respect the student's privacy regarding diagnosis and accommodations. ■

Play it safe when parents revoke consent to 504 services

Though it may not happen often, parents have the right to refuse special education services.

Section 504's requirement that districts maintain a system of procedural safeguards also includes rights to receive notice, to view records, to have a due process hearing, and to have a review of an adverse hearing decision. 34 CFR 104.36. Section 504 does not specify when districts should obtain parental consent for initial evaluations, but the Office for Civil Rights' position is that districts need it before conducting an initial evaluation. 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).

If parents revoke consent for services under Section 504, districts should ensure parents know exactly what they're giving up for their student. They must understand their rights before putting their revocation of consent in writing. Because Section 504 offers little guidance on this, review each revocation of consent on a case-by-case basis.

Understand

Think about a student who is found eligible for services under Section 504 but whose parent decides to revoke consent for him. The district should seek to understand why

the parent is revoking consent and get it in writing, said Timothy J. Riveria, a school attorney at Hammonds, Sills, Adkins, Guice, Noah & Perkins LLP in Baton Rouge, La.

Under the IDEA, when parents revoke consent for special education services, the district must stop the provision of services, providing prior written notice before it does. The district also cannot use mediation or due process to obtain a ruling to provide services for the student. 34 CFR 300.300(b)(4).

OCR has stated that Section 504 neither prohibits nor requires a school district to “override a parental refusal to consent with respect to the initial provision of special education and related services.” Under certain state laws, when a parent revokes consent for 504 services, districts may be able to file for due process to continue those services.

Document

When meeting with parents to understand why they are revoking consent for services under 504, document the meeting itself, Riveria said. Determine whether there’s been a miscommunication or there’s an issue of stigma with the parents or student. For example, Riveria said as a student gets older, he might not want certain accommodations.

“The services might be modified in some way to resolve the issue. The district could consider offering an alternative that still ensures it is not discriminating,” he said.

Document this discussion with parents, as well as

the fact that they were informed of their rights under 504, Riveria said. The district should provide them with a notice of procedural safeguards, remind them of the disciplinary protections under 504, and note the services they could be giving up for the student.

Districts should make sure to get the actual revocation of consent in writing, he said. “Have a meeting with parents to review the notice of rights and figure out any concerns. You don’t want to take something like revocation of consent verbally. You want the parent to sign.”

Proceed with caution

Under the IDEA, after parents revoke consent and the district has discontinued services, the child becomes a general education student. Courts are split on whether a parent’s revocation of IDEA services also means a rejection of 504 services. Under 504, some believe that when a parent revokes consent to services, the student no longer has access to anti-discrimination protection, such as through disciplinary procedures.

Riveria encourages his clients to tread carefully in this situation. He said even if no services are provided to the student under 504, she is still protected from discrimination under 504.

“The student still would be protected from different treatment because of their disability and still would be subject to Section 504 and protection under Title II and the ADA,” he said. ■

Don’t wait for graduation to prepare Section 504 students for transition

As students anticipate graduation and transition to life after high school, educators should remember that students with disabilities might require extra attention or preparation before they leave for a university or the workforce.

“Transitioning planning can’t start early enough. I think we can start from the very beginning to develop a set of skills, so that when the student is actually transitioning, they’re well-prepared to advocate for themselves, they know what they need and how to get it,” said Collins Saint, school attorney at Brooks, Pierce, McLendon, Humphrey & Leonard, LLP in Greensboro, N.C.

While Section 504 does not require transition services in a 504 plan, districts can still prepare students with disabilities for life after high school by helping them develop self-advocacy skills, understand what reasonable accommodations are in college and the workplace, and provide students access to general education transition activities.

Develop self-awareness skills

Start conversations with a student about their disability and accommodations early. Saint said that while

teams focus on facilitating inclusion for the student, they should also facilitate independence.

“I think young kids can begin developing important skills that are going to be needed for them to graduate high school and move on to college or career or something different,” Saint said.

Teach students self-advocacy skills to get them comfortable asking for accommodations and conveying that they understand what their disabilities are, Saint said. This can look like role-playing conversations with a school counselor on how to be polite but persistent so that when students encounter different teachers or individuals throughout their life, they can advocate for themselves.

“We can set these scenarios up for them to practice these skills and this can happen from day one. They are able to practice advocacy, so the first time they are asking for accommodations isn’t to their boss with real-world consequences,” Saint said.

Prepare for real-world challenges

Remind students that 504 plans won’t follow them to their university or job. Because of this, teaching stu-

dents what reasonable accommodations are and how to ask for them will prepare students for different conversations they might need to have in the future, Saint said.

504 teams should ensure students know about the interactive dialogue process under the ADA and Section 504 for colleges and careers. Understanding how this process works could be valuable when seeking reasonable accommodations, said Saint. Saint said that students also need to know what non-discrimination protections look like and how to advocate for them. Additionally, explain to 504 students that they don't have to disclose their disability if they don't want to, Saint said.

Explain access to general ed transition services

Students with 504 plans don't have rights to the additional career or transition planning that students with IEPs do, Saint said. They do have the same rights as other general education students, so it's important for districts not to inadvertently discriminate against them.

"It's important for school districts to make sure they have access to those things. If they need any sort of

accommodations to access those, [ensure] that they're given them," Saint said.

For example, if a school district has a policy where it takes high schoolers on a tour of a nearby university during spring break, but the charter bus the students are required to ride isn't wheelchair accessible, the district would be looking at a discrimination issue if a student in a wheelchair wasn't allowed access, Saint said.

"Not because the student required a different transition plan, but because they weren't given the same access to the transition planning that other students were given access to," Saint said.

While it is important to help a student figure out their career goals after high school, understand that their interests and goals may shift over time, Saint said. Instead, focus on providing a 504 student with the skills they need to enter the workforce or attend postsecondary education, which can look like ensuring access to general education transition activities.

"There's no need to pigeonhole a kid into one path just because they have a 504 plan," Saint said. ■

Refocus 504 eligibility decision-making when law's requirements feel fuzzy

During the Section 504 eligibility determination process, teams may feel overwhelmed by data review requirements. Compared to the IDEA, Section 504 offers less direction on what constitutes an adequate evaluation. So, what's a 504 team to do when requirements seem a little murky?

Although Section 504 evaluations do not necessarily involve the formal assessments required under the IDEA, these evaluations should be based on information from a variety of sources and conducted by people knowledgeable about the student. 34 CFR 104.35(c). Unlike formal assessments that frame IDEA eligibility determinations as a yes-or-no outcome, 504 eligibility involves more nuance. For this reason, it's especially important for the team to examine qualitative data when gauging the impact of the impairment and identifying necessary services.

When it comes to your team's 504 evaluations, make sure "informal" doesn't amount to "inadequate." Put students with disabilities on the path to success by thoroughly reviewing qualitative data like work samples and parent interviews. The following best practices can help your team tighten up 504 eligibility determinations and service decisions.

Gather variety of work samples

Acquire and review as many diverse examples as possible without overwhelming yourself, said Tami

Goulden, Section 504 and home hospital specialist for Washoe County School District in Reno, Nev.

Collect a variety of work samples that provide a thorough snapshot of the student, she said. This includes samples gathered in different settings. Make sure the samples are relevant to the disability. For example, Goulden said an accommodation for occupational therapy might necessitate collecting examples of handwriting. Consider whether the handwriting is consistent across all assignments and take into account the setting and time of day associated with each.

Note extraneous factors during observation

When considering direct observations, remember that extraneous variables can affect how the student acts or learns at school, said Goulden. These can include how long ago she had a nutrition break or when she took medication. For example, consider how blood-sugar levels may impact test performance for students with diabetes, she said. Also, if the majority of tests occur on a Monday after a weekend, fatigue may be an issue.

Take notice of the environment in which the student is being observed, Goulden said. If a test administrator notes that a student received a lower test score on a day when the grass was being mowed outside, that can give the 504 team an idea of how the testing environment posed barriers for the student, she said.

Acknowledge parent observations, input

During the eligibility determination process, even if a teacher expresses that the student is one of her best, don't stop there, Goulden said. Parents may have a different view and share that he struggles with homework. The parents might request that the student receive fewer assignments or be provided with written instructions.

In this situation, teams should determine how homework can be adjusted to mirror what assignments are like in school, Goulden said. Imagine that in math class, a student has access to a laptop and software that help her overcome barriers. Establish whether accessing those tools at home could make homework more user-friendly for the student, she said. ■

Try two-fold analysis in team meetings to address modality, liability of virtual instructors

Some districts are addressing personnel shortages by hiring teachers to provide instruction virtually. If this happens in your district, your special education staff need to be on their toes.

IEP and Section 504 teams should use a two-fold analysis when discussing virtual teachers providing instruction to students with disabilities, said Rachel Nicholas, an attorney at Poyner Spruill LLP in Durham, N.C. This analysis looks at the appropriateness of the student's plan in light of the modality of instruction and what needs to be in place for the student to receive FAPE and avoid disputes.

1. Appropriateness of modality of instruction

As teachers beam into a classroom, IEP and 504 teams should consider how the modality of instruction will affect students with disabilities accessing the instruction. They need to assess if it is appropriate within the student's plan and what supports may need to be in place. These supports will ensure that students can access the general education curriculum or make appropriate progress toward IEP goals, said Nicholas.

Teams need to consider what tweaks need to be made to the 504 plan or IEP to ensure that the student can make appropriate progress and access the general education curriculum. What decisions need to be made for the student to receive FAPE?

Nicholas says to discuss what needs to be in place in the classroom to implement the plan. For instance, if the student requires a one-to-one aide, how will that be implemented during virtual instruction?

Supports will depend on the individual needs of the child, Nicholas said. Some students respond better to virtual instruction than others. Investigate what previous supports the student received during virtual instruction at home. She said to ask the following in team meetings:

- What support might the student need in a classroom setting with a virtual instructor?
- Might the student need to be seated closer to the screen or point of instruction?

- Do adults in the classroom acting as facilitators need to do periodic check-ins with the students?

"The IEP or 504 team should undertake the same analysis that they would take for any other scenario, which is, what are the specific needs of that child? And how can we meet those needs?" Nicholas said.

2. Liability considerations

With this deviation in modality come certain liabilities that districts should be aware of, such as failure to develop an appropriate IEP or implement a plan.

First, teams should consider who will provide any specially designed instruction in classrooms utilizing virtual teachers, Nicholas said. Under IDEA regulations, instructors who deliver specialized instruction must have certain certifications. 34 CFR 300.156. For example, she said, a paraprofessional could assist in providing that instruction while not being the primary provider. Be clear about the threshold between assisting and being the primary provider of that instruction. This is a way for a district to be well-positioned against a parent's claim of failure to implement, Nicholas said.

"Consult with your counsel and your state board of education to ensure that you have a clear understanding on where that line is," she said.

Another potential liability to consider is a claim that the IEP was not crafted appropriately or the accommodations prevented the student from accessing the instruction, Nicholas said.

Teams should continue to monitor students' progress and come back together if the student is struggling academically under a 504 plan or not making progress toward goals in an IEP. Ask what needs to be done differently, she said.

Documentation that the team considered the modality of instruction from the beginning, monitored progress, and reassembled to address any lack of progress are good ways to defend against claims that a plan was not crafted appropriately, she said. ■

Make careful determination to move 504-eligible student to IAES

Under the IDEA, a district may — in circumstances involving weapons, illegal drugs, or bodily injury — move a student with a disability from his current educational placement to an interim alternative educational setting for up to 45 school days, even if the student’s behavior was a manifestation of his disability. 34 CFR 300.530(g).

But what about students covered only under Section 504? Although Section 504 guidelines are not as clear, the Office for Civil Rights has approved the use of IAES placements for such students. *See Crockett County (TX) Consol. Common Sch. Dist.*, 39 IDELR 39 (OCR 2003) (finding that the district was justified in placing the student in an IAES due to his kicking and hitting another student on several occasions).

When 504-eligible students engage in serious behaviors, districts don’t have the luxury of taking their time, said Dave Garner, an attorney at Osborn Maledon, PA in Phoenix, Ariz. “This is why that safety valve was put into the IDEA and would be applicable under Section 504.”

If a district proceeds carefully, it can take action when a student with a 504 plan engages in dangerous behavior warranting placement in an IAES. Be sure to maintain documentation, follow district policy, and reference the definitions of a weapon and serious bodily injury when needed. An attorney’s advice can help your 504 team through the process.

Use IDEA as guide

Under the IDEA, special circumstances that warrant moving a student to IAES include:

- A student carrying or possessing a weapon at school, on school premises, or at a school function.
- A student knowingly possessing or using illegal drugs or selling or soliciting the sale of a controlled substance while at school, on school premises, or at a school function.
- A student inflicting serious bodily injury upon another person while at school, on school premises, or at a school function.

OCR tends to look to the IDEA as a template for how discipline should be handled under Section 504, Garner said. Districts therefore can feel confident complying with the IDEA even when serving a student who only qualifies under Section 504. The IDEA can feel like a “safe harbor,” he said.

Protect against retaliation claims

Even when following the IDEA, Garner recommends that districts review Section 504’s anti-retaliation provision, which broadly prohibits acts that intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any rights he

has under Section 504. Encompassed within this provision are retaliatory acts against people — such as parents — who complain of unlawful discrimination in violation of Section 504 on behalf of an individual with a disability. 34 CFR 100.7(e).

Parents’ claims of retaliation are not uncommon when they believe a district’s decision to move a student to IAES was not in her best interest, Garner said. For this reason, districts must be prepared with documentation to defend and explain that they’re treating the student with a disability the same as they would general ed students.

Avoid overlooking district policy

In addition to documenting equal treatment of students with disabilities, ensure your team complies with school district procedures that apply when pursuing discipline, Garner said. For example, when looking at a long suspension, a school might have a policy that requires it to hold a hearing and make sure parents receive notice of the misconduct five days before that hearing.

“Don’t forget that students with disabilities are also entitled to the procedural protection policies applicable to all students,” said Garner.

Know what behavior qualifies

When students engage in special-circumstance behavior, make sure to follow IDEA guidelines that determine what qualifies as a weapon and serious bodily injury, said Garner. Call the district’s counsel and make sure those boxes are being checked.

Serious bodily injury under the IDEA “involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.” 34 CFR 300.530(i)(3).

The definition of a weapon under the IDEA mirrors the definition in the U.S. criminal code. A weapon is a device, instrument, material, or substance, animate or inanimate, used for, or readily capable of, causing death or serious bodily injury, not including a pocketknife with a blade of less than 2 1/2 inches. 34 CFR 300.530(i)(4).

When it comes to student drug or alcohol use, Section 504 allows districts to sidestep procedural overlay and discipline a student with a disability to the same extent as a student without a disability, said Garner. *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).

“The district could place a [504-eligible] student unilaterally in an IAES or simply proceed with suspension or expulsion,” he said. ■



5 steps to write a 504 plan

1. Identify the difficulty a student is having at school through a proper eligibility determination. Document the “physical or mental impairment” that “substantially limits” a “major life activity.” 28 CFR 35.108(a)(1)(i). For example, state, “Sam’s ADHD substantially impacts his ability to concentrate.”

2. Describe when the impairment impacts a major life activity, such as “Sam’s ADHD substantially impacts his ability to concentrate during whole group instruction.”

3. Explain why the impairment impacts the major life activity. For example, it is important to explain that the substantial impact is because Sam’s medication wears off later in the school day, his peers at his table distract him, or he prefers to draw.

4. Brainstorm matching concepts or effective accommodations and supports for each impact. For instance, consider giving Sam preferential scheduling or seating and prompts for attention.

5. Add details to explain how the accommodation will be provided or implemented. For example, explain that the counselor will schedule math and English/ language arts classes early in the day; teachers will seat Sam next to generally “on task” peer models or teachers; and when they notice him drawing, they will do a quick whole group check for understanding, give Sam an individual nonverbal prompt, or reset.

Source: Section 504: All the Things You Need to Know, presented by Alefia Mithaiwala, Esq. at LRP’s 44th National Institute on Legal Issues of Educating Individuals with Disabilities. ■

School vows to fix failure to provide child 504 classroom accommodations

Case Name: *Brookfield R-III (MO) Sch. Dist.*, 124 LRP 1805 (OCR 07/26/24).

Ruling: An Ohio district agreed with OCR to resolve allegations that it failed to implement a child's 504 plan. The district promised to determine whether compensatory or remedial services are due and whether the student's grade needs adjusting, revise its policies, and train staff. OCR will monitor the district's implementation of the resolution agreement. OCR found insufficient evidence that the district treated the student differently than nondisabled students.

Meaning: Districts are required to implement all of the accommodations under a student's 504 plan. In this case, a teacher allegedly failed to provide a student's 504 accommodations and denied the student's request for an accommodation. Better training of staff and detailed policies and procedures for implementing 504 plans will ensure that staff implement all of the accommodations within a student's plan with fidelity rather than waiting for the student to request them. It will also ensure that students' reasonable requests for accommodations are granted.

Case Summary: A Missouri district's alleged failure to provide a student's 504 classroom accommodations meant that it had to determine whether compensatory education was due. The district also had to revise its policies regarding 504 plan implementation. The student's 504 plan provided for multiple classroom accommodations. The parent contacted OCR alleging that a teacher failed to provide the student's 504 accommodations and denied the student's request for an accommodation. ADA Title II and Section 504 provide that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any district program or activity, OCR explained. It expressed concerns that the district did not have policies or procedures regarding implementation of 504 plans or IEPs. And it may not have provided the student certain 504 accommodations in class, which may have denied the student FAPE, OCR observed. Prior OCR's completing the investigation, the district voluntarily entered into a resolution agreement. It committed to determine whether the student requires compensatory or remedial services for any classroom accommodations the student didn't receive and whether the student's grade requires adjustment. It also agreed to adopt new policies and procedures and train staff to ensure that students with disabilities enrolled in the class receive accommodations consistent with their 504 plans and IEPs. ■

Reporting 5-year-old's not attending school mandatory, not retaliatory

Case name: *Robinson v. New York City Dep't of Educ.*, 124 LRP 11 (E.D.N.Y. 12/28/23).

Ruling: The U.S. District Court, Eastern District of New York declined to reconsider the Section 504 retaliation claim brought by the parents of a kindergartner with autism. It also declined to reconsider their claim that a district failed to implement impartial hearing officers' orders resulting from the denial of FAPE in an IDEA dispute. It denied both parties' motions for reconsideration.

504 quick quiz

Q: Must districts provide FAPE to students in dual-enrollment programs on college campuses?

In the case of an educational program that offers both college and high school credit, the district's duty to provide FAPE only extends to the part of the program that offers high school credit. See *Clarke County Public Schools* (VA), 118 LRP 38709 (OCR 04/06/18), where OCR determined that a Virginia school district properly implemented Section 504 accommodations. The teen with an undisclosed disability was enrolled in a nurse's aide dual-enrollment program. Because the district offered Section 504 accommodations and ensured that she received high school credit for the course, her failure to pass the college credit portion did not deny her FAPE.

Similarly, in *San Diego (CA) Unified School District*, 118 LRP 17376 (OCR 11/09/17), a district erred in requiring an 11th-grader with a disability to talk to her dual-enrollment course instructor about extended time on tests. The student was completing a dual-enrollment course provided at the high school during the school day and earning high school credit. Even though the community college required students with disabilities to arrange their own academic and testing accommodations, OCR found the district in violation of Section 504 and Title II. Had the student enrolled in the college course independently, she would have been responsible for seeking accommodations, OCR found.

Even for a college-level course, a district must provide necessary accommodations to ensure FAPE if a student is earning high school credit. In *Johnston County (NC) Schools*, 116 LRP 26085 (OCR 04/22/16), a student with an undisclosed disability did not receive the same accommodations in her district's dual-enrollment program as she did in high school. The student's college instructor notified the district about the student's late work, and the 504 coordinator advised the student to obtain support by working with her instructors for assistance. OCR found that the district should have convened the student's 504 team to determine if college-level services were needed.

A: Yes, but the scope of the district's duties under Section 504 depends on whether the student will earn high school credit. Districts are prohibited from discriminating against students on the basis of their disabilities.

What it means: A district doesn't violate Section 504 if it can show that it had a legitimate reason for its adverse action that wasn't a disguise for unlawful retaliation. This district successfully argued that, even if the parents of an often-absent student established retaliation by its reporting of suspected child abuse, it had a genuine, legitimate, non-retaliatory reason for making the report. It explained that school officials are mandatory reporters of suspected child abuse and maltreatment in New York, which includes violating the state's compulsory attendance law.

Summary: A New York district did not retaliate by reporting suspected child abuse when it learned that a kindergartner with autism wasn't attending school. The parties will have to amicably work together to implement IHOs' ordered remedies for a denial of FAPE. The parents disagreed with the district's IEP and unilaterally placed the child in a private school. Finding that the district denied the child FAPE and that the private placement was appropriate, IHOs ordered the district to fund evaluations and reimburse home health aide services. During the due process proceedings, having learned from the parents that the child wasn't attending school, the district reported child abuse and maltreatment. The parents generally alleged that the district retaliated while they were involved in a due process hearing. To establish unlawful retaliation in violation of ADA Title II and Section 504, they had to show that they engaged in a protected activity and were subjected to an adverse action by the district, the court explained. The district must then proffer a genuine, legitimate, nondiscriminatory reason for the action, the court added. It held that the parents established retaliation, but the district articulated a genuine, legitimate, non-retaliatory reason for its decision to report suspected child abuse. School officials are mandated reporters in New York and are required to report suspected child abuse or maltreatment, the court explained. That includes a parent's failure to supply the child with education as required by the state's compulsory attendance law, starting at age 5, it added. When the parent stated that the child wasn't attending school, that gave school officials reasonable cause to believe the child was being maltreated and legally obligated them to report it, the court reasoned. There was nothing to suggest that the report wouldn't have been made in the absence of the retaliatory motive; the district was mandated to report immediately upon hearing the child wasn't in school, it explained. ■

Delay in staff training thwarts teen from fully utilizing AT device at school

Case Name: *Tempe (AZ) Union High Sch. Dist.*, 123 LRP 33173 (OCR 04/14/23).

Ruling: OCR determined that an Arizona district may have failed to properly implement the IEP of a ninth-grader with multiple medical conditions. It also found that the district may have failed to place the student in the least restrictive environment. To resolve the potential FAPE vi-

olation under Section 504 and Title II, the district agreed to provide any necessary compensatory services.

Meaning: If a multidisciplinary team determines a student needs assistive technology, the district should consider all elements necessary to implement the device and provide FAPE. This includes appropriate training for the student, parents, and staffers, especially if the AT device's functions are complex. Once it secured a communication device for the student, this district should have contacted the device's manufacturer to request training and hired an AT consultant. Had the district taken these steps before the start of the school year, it could have maximized the student's usage of the device at school and avoided the parent's disability discrimination complaint.

Case Summary: Evidence that school staff struggled to use a high schooler's communication device indicated that the Arizona district may have denied the student FAPE. OCR closed its Section 504 and Title II investigation once the district pledged in a resolution agreement to provide the student compensatory services. Section 504 and Title II require a district to provide FAPE to all eligible students with disabilities in its jurisdiction. One way to satisfy this requirement is to properly implement an IEP developed under the IDEA. The district may have violated this mandate, OCR determined. According to the student's IEP, she was entitled to use an augmentative and alternative communication device in all classes. However, the parent argued that school staff failed to properly utilize the communication device. To address this issue, the district began working with an AT consultant in September 2022. OCR noted that the consultant trained the parent, the student's private providers, and school staff to properly and consistently use the communication device. The consultant also ensured that the communication device was properly mounted to the student's wheelchair and answered all relevant individuals' questions related to the device. Moreover, the manufacturer of the communication device subsequently sent the district a regionally based trainer to conduct an on-campus training session for school staff, the consultant, and the parent. Nonetheless, OCR expressed concerns about "the time it took for District and School staff to learn to properly implement the Student's communication device." This raised questions about whether the district fully utilized the device in each of the student's classes as required by the IEP, OCR highlighted. Before OCR completed its investigation, the district executed a resolution agreement. It pledged to convene the student's IEP team and provide the student any necessary compensatory educational services, among other corrective measures. ■

Staff shortage doesn't excuse 6-month delay of at-home parent training

Case Name: *Alvin (TX) Indep. Sch. Dist.*, 123 LRP 33085 (OCR 05/02/23).

Ruling: OCR determined that a Texas district may have failed to implement the parent training services required by

the IEP of a grade schooler with an undisclosed disability. To resolve the potential FAPE violation under Section 504 and Title II, OCR instructed the district to conduct staff training and provide the student any necessary compensatory services.

Meaning: Districts may not always be able to prevent staff shortages. That said, a district may take steps to ensure a potential staff shortage does not interfere with a student's receipt of FAPE and result in disability discrimination. When this district couldn't find an educator to implement the at-home parent training required by the student's IEP, it should have considered reaching out to other districts and community agencies for assistance. This may have helped the district locate a temporary, qualified trainer to work with the parent while it searched for a full-time staffer for the next six months.

Case Summary: A Texas district's failure to provide at-home training for the parent of a grade schooler with a disability for six months raised FAPE concerns. Although OCR concluded that the district may have violated Section 504 and Title II, it closed the parent's complaint once the district executed a resolution agreement. Under Section 504 and Title II, a district must provide FAPE to all eligible students with disabilities. One way to achieve this is to appropriately implement an IEP developed under the IDEA. OCR determined that the district may have failed to satisfy this FAPE requirement. According to the student's SY 2022-23 IEP, the district was required to provide the parent eight weekly sessions of in-home training. The purpose of the parent training was to help the parent "meet the Student's communication, self-help, behavior, and community goals." The evidence showed that the district failed to implement this parent training from May 2022 through December 2022 due to a lack of personnel who could provide the service. In fact, the district informed the parent that it would provide compensatory in-home parent training once a trainer could be assigned, OCR observed. The parent argued that the district failed to provide her the compensatory parent training services even though it assigned a trainer on Dec. 2, 2022. While OCR acknowledged that no training sessions had yet occurred, this delay was caused by the parent's failure to cooperate with the district's trainer. It highlighted that the trainer properly met with the parent on Jan. 3, 2023, and attempted to provide eight hour-long weekly sessions of training since then. Before OCR completed its investigation, the district executed a resolution agreement to resolve the potential FAPE violation. It pledged to conduct staff training and provide the student any necessary compensatory services by Oct. 31, 2023. ■

Principal deters admission of child with IEP to afterschool program

Case Name: *New York City (NY) Dep't of Educ.*, 124 LRP 1289 (OCR 08/18/23).

Ruling: A New York district agreed to resolve OCR's concerns that it discriminated against a child with an undisclosed disability in violation of ADA Title II and Section 504 by denying him admission to its afterschool program. The district promised to invite the child to register for the program and request aids, benefits, or services to enable his participation. It also agreed to train staff. OCR will monitor the district's implementation of the resolution agreement.

Meaning: The 504 obligation to allow students with disabilities to equally participate and benefit from district programs extends to afterschool programs. And, a district cannot facilitate or perpetuate disability-based discrimination by a third party who operates an afterschool program on school property or with the district's support. Here, the principal allegedly represented to the parent that children with IEPs couldn't be accommodated in its afterschool program and denied the child admission. Instead, the district should have asked what services and supports the child might need to participate as fully as nondisabled children do.

Case Summary: A New York district may have discriminated against a child with an undisclosed disability by denying him admission to its afterschool program. The parent contacted OCR alleging that the district discriminated by denying her son admission to its afterschool program and failing to consider providing aids and services to allow him to participate. OCR explained that a district that operates a day care program or activity or voluntary noneducational program may not, on the basis of disability, exclude children with disabilities under ADA Title II and Section 504. Districts may not, through contractual, licensing, or other arrangements, deny children the opportunity to participate, or limit their enjoyment of any right, privilege, advantage, or opportunity enjoyed by nondisabled children, it added. And they may not aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability. Districts must take into account a child's needs in determining the aids, benefits, or services necessary to enable the child to participate, OCR noted. It observed that the afterschool program was located in the school, employed several school employees, and operated pursuant to an extended use permit. The parent asserted that the school principal stated she was certain the child wouldn't be well supported and successful in the program because of his IEP. The principal also allegedly stated that it couldn't enroll children with IEPs if it didn't have the resources. She acknowledged that the district had a role in supervising or managing enrollment in the program, OCR observed. OCR expressed concerns that the program and/or the district may have discriminated against the child on the basis of his disability by denying him admission to the program and failing to consider supplemental aids and services that would enable him to participate. ■