Section
504 COMPLIANCE ADVISOR

ROUTE TO

Your Guide to Understanding and Administering Section 504

VOLUME 28, ISSUE 2 APRIL 2024

IN THIS ISSUE

Don't just wag your finger at service animal requests: Do this instead

When parents and students with disabilities want to bring a service animal to school, there is little wiggle room on what a district can initially ask.

For example, districts are not allowed to require parents or students with disabilities to provide proof of certification, license, or training for the service animal. 28 CFR 35.136(f). In *Hillsborough County (FL) Public Schools*, 123 LRP 32351 (OCR 05/11/23), a high school student with general anxiety disorder requested to bring a service animal to school. The school district violated Section 504 and Title II when it requested documentation of the animal's training. To remedy the violation, the district pledged to revise its service animal policy and conduct staff training.

A district can only inquire regarding: (1) whether the service animal is required because of a disability; and (2) the work the animal has been trained to perform. Districts cannot, however, inquire about these issues when the task an animal performs is readily apparent. 28 CFR 35.136(f).

Responding appropriately to a service animal request requires knowing what not to say. Once a district has determined a student's service animal will be in school and on school grounds, it should start planning with and for those who may be affected by the presence of the animal. The following common concerns highlight what staff can and can't ask when preparing to welcome service animals at school.

What happens if a student is allergic?

When a service dog is allowed in a classroom, it is important to consider possible implications for staff and students with life-threatening allergies, said Beth Harris, a partner at Shaw, Perelson, May & Lambert LLP in New York. Confer with the parents of the student with the service animal and notify staff and families in the school community of the service animal's arrival without identifying the specific student with the disability. Notification correspondence should advise families of students with allergies on how to raise any issues with a specific administrator, she said.

The district would need to accommodate students with disabilities who have allergies to the service animal, Harris said. Accommodations should be considered by the district's Section 504 team and could in-

(See **SERVICE ANIMALS** on page 3)

Did Tenn. district isolate cheerleader with Down syndrome before football game?

An 11th-grader with Down syndrome was a member of her high school's cheer team. Her Tennessee district sent a group text message to all cheer parents that detailed when and where the cheerleaders should meet for the first home football game of the season.

The parent brought the student to the football field for warm-ups at 5:30 p.m. as directed. When the game was about to start, the coaching staff discovered the student was not on the field with her fellow cheerleaders to greet the players. The coaching staff found the student at the concession stand and ran with her down to the football field. The student was able to greet the players alongside the other cheerleaders.

The parent claimed the district required the student to stand at the concession stand away from her teammates. The district maintained that the student participated in warm-ups and was released to her aunt, who was working the concession stand, so she could get dressed for the game. In addition, the district pointed out that the student participated in the cheer activity despite the confusion.

A district cannot exclude a qualified student from its programs and activities because the student has a disability. 34 CFR 104.4(a).

Did the district violate Section 504 by excluding the student from the cheer activity?

A. Yes. The student's absence from the football field before the start of the game showed that the district discriminated against her because of her disability.

B. No. The district discovered the student's absence and took steps to ensure she participated in the cheer activity with her teammates.

C. No. Section 504's antidiscrimination provisions do not apply to cheerleading or other extracurricular activities.

How OCR ruled: B.

In *Metro Nashville (TN) Public School District*, 124 LRP 1970 (OCR 07/17/23), OCR noted that it was unclear why the student was at the concession stand just before the game. Although the district maintained that the cheer coach released the student to her aunt, the student's aunt denied that she worked the concession stand during that particular game.

However, OCR explained that the reason for the student's absence from the field did not matter. OCR pointed out that coaching staff discovered the student's absence, found her at the concession stand, and ran with her back to the field so that she could greet the players as they entered.

"Although the Student was not present on the field initially, the investigation reflected that she joined the cheerleading team on the field in time to participate in the cheer activity," OCR wrote. As such, OCR found insufficient evidence that the district treated the student differently on the basis of disability.

A is incorrect. The confusion over the student's whereabouts did not impede her participation in the cheer activity.

C is incorrect. The Section 504 regulations expressly require districts to ensure that students with disabilities have an equal opportunity to participate in nonacademic and extracurricular activities.

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

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SERVICE ANIMALS (continued from page 1)

clude increased cleaning protocols, air purifiers in the classroom, or physically separating the service animal from the individual with an allergy. Harris recommended using correspondence to answer frequently asked questions and raise awareness about individuals' needs for service animals.

Who will be the handler?

The district has a right to insist that the service animal is harnessed, leashed, or tethered, unless those restraints interfere with the animal's work or the student's disability prevents the animal from using them. 28 CFR 35.136(d). The student's team will need to confer with the parent about who will handle the service animal while at school, Harris said. If the student is unable to maintain the service animal due to disability or age, a Section 504 team should discuss whether the student requires support in the form of a handler or aide.

What happens if the service animal is unruly?

ADA requires that handlers be in control of their service animals. 28 CFR 35.104; 28 CFR 35.136(b); and 28 CFR 36.302(c). If the district witnesses the animal urinating or defecating indoors, being overly loud, or otherwise failing to perform its function, it should document the frequency and duration of such occurrences, Harris said. Best practice is to collect such data to use as evidence of legitimate safety and sanitation concerns, should the district need to demonstrate why it excluded the animal from the building.

Does a service dog need to be vaccinated?

If state law requires that all dogs be licensed and vaccinated to enter buildings open to the public, districts may ask for vaccination records, said Harris. However, districts shouldn't request vaccination records only for service animals, thereby imposing additional requirements on students with disabilities, she said. Some districts include this information on a service animal request form.

Where can the service animal go?

The service animal ideally should have access everywhere the student does, said Harris. With that said, the ADA does not require districts to modify practices, policies, or procedures if doing so fundamentally alters the nature of the service, program, or activity. Regulations also don't override legitimate safety requirements. 28 CFR 35.136(a). For example, a service dog probably would not need access to a school swimming pool.

Keep in mind the animal may need a special tether or harness on a school bus. The student and service animal may also need alternate transportation. In some cases, classroom desks or chairs may need to be rearranged to allow the service animal and handler to move around safely. ■

To nix mix-ups, know how FAPE differs under 504, IDEA

Depending on a person's background, the idea of a free appropriate public education might conjure up different ideas.

Under Section 504, school districts are required to provide FAPE to all qualified students with disabilities, regardless of the nature or severity of those disabilities. 34 CFR 104.33(a).

A key difference between FAPE under the IDEA and FAPE under Section 504 is that for the former, a district is obligated to provide specially designed instruction. The IDEA also aims to provide an individualized educational benefit focused on a student's progress relative to her own potential. In contrast, under 504, FAPE is comparative, requiring that students with and without disabilities have the same access to the benefits of a public education.

Before they write students' plans, building-level teams need to understand the differences between FAPE under the IDEA and FAPE under Section 504. Protect against denial-of-FAPE claims by getting back to basics with team members. Use the advice below to clarify where the line of FAPE lies for students with 504 plans.

Don't confuse learning targets with accommodations

Shanon Lewis, student 504 and ADA coordinator for Seattle (Wash.) Public Schools, said to make sure school teams don't confuse learning targets with 504 related aids and services. Remember, 504 is all about nondiscrimination. Encourage school-based 504 teams to speak with the student's teachers to ensure the learning target is not being addressed through a 504 plan, said Lewis.

For example, if the plan says a student will receive tests back with corrections and will be able to re-submit for full credit, that may alter the learning target. Failing to consult with the teacher could lead to inadvertently providing SDI for that 504 student and becoming out of compliance with 504 FAPE, she said.

Review the following example, which shows how teaching of vocabulary might look different for a 504-eligible student receiving an accommodation versus an IDEA-eligible student receiving SDI.

Accommodation under Section 504	SDI under the IDEA
Changes how the student accesses learning content.	Changes the learning content itself.
For example, a special educator pre-teaches vocabulary through explicit instruction before the general educator discusses a text that includes that vocabulary.	For example, the student finds the vocabulary words in the full text rather than reading and discussing the text.

Source: Amanda Bruce, low incidence consultant at the Ohio Valley (Ky.) Educational Cooperative

Consider *H.D. v. Kennett Consolidated School District*, 75 IDELR 94 (E.D. Pa. 2019), which illustrates how a district can fend off a denial of FAPE claim by implementing appropriate 504 accommodations. The student in this case reported that homework and public speaking triggered his panic attacks. Because the district offered accommodations that reduced the difficulty of his homework and allowed him to opt out of class presentations, the court dismissed the parents' claim that the student was denied FAPE. This finding affirmed that accommodations aimed at helping a student manage his condition, while not fundamentally changing learning targets, constitute FAPE under Section 504.

When in doubt, communicate

Foster a culture of communication among your 504 building-level coordinators, Lewis said. This means an open-door policy where school-level teams reach out to the district-level coordinator when they are concerned that SDI may have been included in a student's plan. Consider creating an online forum where building coordinators across the district can benefit from others' "asked and answered" questions, she said. ■

Roll with advocates' role to foster parent input at IEP, 504 meetings

Parent advocates may come into an IEP or 504 meeting insisting on a particular outcome for a student. Advocates also may bring varied experience and knowledge of special education law and procedure, making for a potentially uncomfortable interaction.

Nothing in the IDEA regulations prohibits parents from bringing an advocate to a meeting. *See Letter to Serwecki*, 44 IDELR 8 (OSEP 2005). The presence of an advocate should, however, signal to districts that the parent may not be feeling heard, said Aubrey Lombardo, partner at Henneous Carroll Lombardo, LLC, in Providence, R.I.

To avoid inhibiting parental participation, teams will have to respect and work well with the advocate. Districts should consider the parent's and advocate's perspectives and rely on data when disagreements arise. Use these dos and don'ts to guide collaboration with parent advocates at an IEP or 504 meeting.

✓ Do focus on data

Rely on the data when considering advocates' input, said Lombardo. Ask them to explain their position instead of dismissing it. The district may need to explain that the advocate and parent's request may not align with the IEP goals or evaluation results. The data — since it answers questions about how a student is making progress and whether a placement is too restrictive — is the truth-teller, she explained.

"Focus on the facts. Emphasize that you care about the student and show them the data because that's how you make your decision."

× Don't view advocate as adversary

When an advocate walks into a meeting with a parent, view it as an opportunity for collaboration, Lombardo said. Advocates' experience will vary depending on their background; some have more special education law knowledge than others. Regardless of their experience, recognize and respect their role in the process.

"It's important that they feel heard, and that you consider and address each of the things that they have to say," she said.

✓ Do address both parent and advocate

During the meeting, parents may choose to take the lead in the conversation or let their advocate speak for them. In either case, the district should speak to both parent and advocate, Lombardo explained. When working through issues, recognize that the parent is the member of the team, and the advocate has an important role as well.

× Don't meet emotion with emotion

Advocates may come into meetings with high emotions, yelling or accusing the district. In those moments, it's easy for staff to become defensive, Lombardo said. It's important, however, to take the productive parts of what an advocate or parent is saying and address them as professionally as possible.

"Listen and help move the team forward, address-

ing all of their issues without that emotion," she said.

If the team feels unsafe, it may be wise to reconvene the meeting for another time when district counsel can be present.

☑ Do suggest reputable advocates to parents

When a student qualifies for special education or a 504 plan, consider connecting parents with their state's parent information network. For some of Lombardo's clients, the Rhode Island Parent Information Network, also known as RIPIN, provides trained, experienced advocates that help parents understand the special education process.

"Districts, in my experience, don't mind at all when parents have advocates but would prefer that they get advocates who are knowledgeable and can be a real benefit to the team," she said. ■

OCR reports students with disabilities make up small slice of dual enrollment pie

The Department of Education's Office for Civil Rights (OCR) released new reports regarding the overall enrollment of students with disabilities in public schools. OCR's data snapshot reported that 8.4 million students with disabilities accounted for 17 percent of overall public-school enrollment during the 2020-21 school year.

According to data from the Civil Rights Data Collection, students with disabilities served under the IDEA accounted for 4 percent of students enrolled in dual enrollment or dual-credit programs. That is, out of the 1.6 million dual enrolled students, roughly 64,000 of them were served under the IDEA, according to the report.

ED has stated that if a district uses Part B funds to support students in dual enrollment programs, the courses offered must be necessary for a student to receive FAPE and *constitute secondary school education in the state. Questions and Answers on Increasing Postsecondary Opportunities and Success for Students and Youth with Disabilities*, 75 IDELR 79 (EDU 2019).

Under Section 504, districts are prohibited from discriminating against students on the basis of their disabilities. 34 CFR 104.43(a). However, whether districts are required to provide FAPE to students in dual enrollment programs on college campuses depends on whether they will receive high-school credit. Learn from a few recent cases involving dual enrollment.

Providing FAPE

When an educational program offers both college and high-school credit, the district's duty to provide FAPE will extend to the part of the program that offers high-school credit. In *Clarke County Public Schools (VA)*, 118 LRP 38709 (OCR 04/06/18), OCR determined that a Virginia school district properly implemented the Section 504 accommodations of a high school student with an undisclosed disability who participated in a dual enrollment program. The student had a Section 504 plan for extended time on assignments when absent, as well as a contract with her professor about deadlines for makeup work.

Throughout the school year, the student's college instructor offered different options for completing missing assignments, which the student did not use. Subsequently, the college instructor recommended that the student be removed from the college-credit portion of the course. The student's parent filed a complaint with OCR asserting that the district failed to provide FAPE. OCR emphasized that the district's duty to provide FAPE extended only to the portion of the dual enrollment class that involved high-school credit.

Student performance

Districts aren't responsible for a student's performance in a dual enrollment program's college courses. See *Moynihan v. West Chester Area School District*, 80 IDELR 216 (E.D. Pa. 2022), where parents of a high-school student with autism and social anxiety disorder failed to establish that a district denied the student FAPE after the student received Ds in a dual enrollment program's college courses.

The district pointed out that the student had made progress toward planning and study goals. The court explained that a district must develop an IEP that is reasonably calculated to enable a student to make appropriate progress in light of his circumstances. Districts aren't required, the court noted, to design an IEP that's reasonably calculated to enable a student to make significant progress.

State law

Districts should examine how state law determines postsecondary education. Two cases out of Kentucky illustrate this: *Bradley v. Jefferson County Public Schools*, 123 LRP 37395 (6th Cir. 12/21/23) and *Holland v. Kenton County Public Schools*, 123 LRP 37397 (6th Cir. 12/21/23). In the latter, parents of a student with ADHD, a spe-

cific learning disability and encephalopathy enrolled their son full-time in a community college program, effectively withdrawing him from his special education services.

The parents alleged that the district violated the IDEA because it was required to continue to implement the student's IEP in the community-college program. The court pointed out that the obligation to provide FAPE under the IDEA does not extend to postsecondary education, which is a matter of state law. Under Kentucky law, a high schooler who enrolls in a college-level course of study on a college campus and simultaneously earns high-school credit receives a postsecondary education. ■

Contingent accommodations in 504 plans can invite implementation errors

Imagine a student with a disability is approaching a transition from middle to high school. His parent worries about the increased rigor of high school work and insists that the student's Section 504 plan include the accommodation of extra time on tests. While acknowledging that the student routinely finishes tests within the time provided, the team agrees to add the accommodation. As an attempted compromise, they write it so that the student will receive the extra time only if his grade drops below a C.

Limiting the circumstances under which a student receives an accommodation or modification may appease parents but could complicate the delivery of these supports, said Michelle A. Todd, a partner at Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP in Itasca, Ill.

Navigate around potential failure-to-implement claims by focusing only on what the student needs today, tomorrow, and next week. Todd said the team can always reconvene to make adjustments. She shares how to avoid complicated contingencies and write feasible modifications and accommodations into 504 plans.

Q: *What do "contingency" accommodations look like in a plan? Why are these a problem for students and teachers?*

A: For example, a student may receive an accommodation or modification *only* if he does not receive a certain grade in an academic class. Or a student may receive an accommodation or modification for classwork *only* if she demonstrates poor attendance. The complexity of these contingency plans could result in staff inadvertently failing to follow the 504 plan. School teams may agree to contingencies as a compromise after a difficult discussion regarding a parent's request for an accommodation. In general, however, school teams should avoid them. They are difficult to implement with fidelity, resulting in litigation risk.

Q: *How can teams make sure to focus on a student's current accessibility needs?*

A: While Section 504 plans do not require goal statements or formalized progress monitoring on specific deficits, staff should review a student's current academic and functional performance on a yearly basis and at key transition points. For example, the student's move from elementary to middle school might necessitate a review.

Teams should consider the student's use of accommodations and modifications in her current 504 plan, whether the student self-advocates for the accommodation, and whether she is resistant to the supports in the plan.

Q: *What are some common ways to determine whether a 504 plan is meeting those current needs?*

A: To assess the efficacy of a Section 504 plan, staff should review information from a variety of sources. These sources include the student's academic performance, grades, standardized assessments, attendance, behavior and discipline reports, classroom observations, self-advocacy and use of current accommodations in the school setting, and reports from the student's teachers. Ultimately, school teams should provide students only with necessary accommodations.

Q: *What are some ways to ensure student access without dwelling on hypotheticals?*

A: If the school team is prepared with timely information on a student's present levels of performance from a variety of data sources, this is the best way to have a candid and factual conversation about needs and requests for accommodations without dwelling on hypotheticals and "what ifs."

While parents will often express concern regarding their child's academic performance prior to a transition to a new grade level, the school team needs to review the student's needs in the current setting to determine accommodations and modifications. School teams can deny a parent request if the denial is grounded in a discussion of the student's current functioning. Of course, school teams should agree to monitor the student in the new setting and reconvene if he struggles following this transition.

School teams should also communicate to both parents and students a willingness to reopen the discussion if a student starts to present differently, her academic performance changes, she begins to demonstrate dysregulation or school avoidance, [or other changes occur]. ■

Reconsider needs of students with ADHD when medication changes

Changes in medication can affect students with ADHD in a myriad of ways. An adjustment in dosage, a switch from one medication to another, or a discontinuation of medication should signal the IEP or Section 504 team to meet and review possible implications.

Under the IDEA, districts must remain alert to changing educational or related services needs of a child with a disability and reevaluate when warranted. 34 CFR 300.303.

Section 504 requires teams to take similar action. In *Petersburg (VA) Public Schools*, 70 IDELR 210 (OCR 2017), the Office for Civil Rights determined that the district violated Section 504 by not reevaluating a child with ADHD despite evidence that his worsening behavioral issues were impeding his learning.

Failing to account for the evolving needs of students with ADHD leaves districts open to claims of FAPE denial. Recognize when students' medication changes necessitate reevaluation and possible implementation of more individualized support. Bring the following considerations to your next IEP or 504 meeting to help frame needs assessment for students with ADHD.

Consult with physician about impact of new dose

When students with ADHD begin taking a new dose of medication, classroom performance may suffer during the adjustment period. Obtain a release to speak with the student's physician about possible effects. For example, a lower dose of medication might not last the entire school day, leaving the student with a sunset period when she loses focus.

Advise extracurricular staff on medication effects

When a student with ADHD tries out for an extracurricular sport, ensure that coaches understand how medication changes may show up on the field. The student whose new medication is less effective may become easily distracted, leading a coach to inadvertently discriminate by benching her.

Take schedule shifts into account

A disruption to the student's schedule or a fluctuating schedule could complicate the timing of medication administration. Consider, for example, an unexpected school closure or a transition to a hybrid model where the student begins attending online for a portion of the week. Determine how the student's behavior may be affected and communicate with parents about when medication will be given in these situations.

Maintain communication with parents

Contact parents to report changes in a student's behavior or performance following an ADHD medication switch. The district may need to allow the student more flexibility, as some medications can temporarily worsen symptoms, increasing irritability or problem behaviors. Remember to also report students' positive changes to parents.

Identify behavior-related supports

Students with ADHD who lose the support provided by a previous type of medication may struggle to meet behavior expectations. Students might require a functional behavioral assessment to inform a behavioral intervention plan. Supports and accommodations identified through evaluation could include increased structure, prompting, clear directions, extra guidance, reinforcement, and behavioral tokens. ■

Circle back when students don't respond to 504 accommodations for anxiety

For students who experience anxiety, the condition can manifest in different ways. It may surface as angry outbursts, self-isolation, or even school avoidance.

If students require a Section 504 plan for anxiety, their accommodations should reflect how that anxiety shows up. In addition, sometimes teams may need to go back to the drawing board. If accommodations aren't working, don't make the mistake of failing to reevaluate and revise the plan if needed. Convene the 504 team, collect new data, and try accommodations and strategies that emphasize symptom management and coping strategies.

Evaluate students' needs

When a student is not responding to accommodations for anxiety, that should prompt the 504 team to

discuss her current needs, said Jacqueline Rhew, a licensed clinical professional counselor and cofounder of the Center for Emotional Wellness in Illinois. Depending on how severely the student's anxiety is disrupting her engagement with school, determine whether further evaluation or a case study is necessary. A checklist to prepare the student for further evaluation may be helpful.

Opening a case study will provide additional data on what is going on at home for that student, Rhew said. Also use classroom observations to see how a student responds to triggering situations. If a student's anxiety arises during a particular subject, consider whether the student needs to be evaluated for a learning disability, Rhew said.

Focus on managing symptoms

Teams may focus on accommodations that attempt to remove the source of students' anxiety. Instead, try selecting interventions to help them manage anxiety, Rhew said. Determine how the student can be taught to confidently navigate the condition at school through coping strategies.

If students' anxiety manifests as avoidant behavior, allowing them to leave the classroom without a return plan may only intensify the symptoms, Rhew said. If a student's anxiety appears in the form of angry or explosive behavior when doing a non-preferred activity, implementing emotional regulation strategies and learning to take a break could be beneficial, she said.

"We want the accommodations to be purposeful in helping students build confidence," she said.

Accommodations should be tailored to how the student's anxiety shows up at school, said Rhew. Consider the following manifestations and associated accommodations that may help.

- **Difficulty in unstructured situations.** A student who struggles to even begin a project may not benefit from an extended deadline or no deadline. Instead, provide a workable structure for assignments and projects and enable the student to complete them, Rhew said.
- **Refusal to come to school.** Instead of providing generic check-in and check-out with whoever is available, make sure the student has a designated safe adult in the school building. Rhew described this person as someone who is a champion for the student and with whom the student has a relationship.
- **Panic attacks at school.** Avoid providing a broad accommodation of allowing the student to leave class for an undetermined amount of time to see a counselor or go to a calming room. Instead, ensure students know when to return, Rhew said. Make sure counselors and staff know how long a student is to be out of class when using coping strategies.
- **Struggles with perfectionism.** Consider how else the playing field can be leveled instead of providing unlimited extended time on tests for a student who exhibits fear of failure or anxiety and perfectionism, said Rhew. Determine whether this student would benefit from practice tests or pre-tests to dampen anxiety and promote realistic goals. ■

Section 504 accommodations for students with juvenile arthritis

Students with juvenile arthritis may be eligible for services under Section 504 if their impairments substantially limit one or more of their major life activities. 28 CFR 35.108(a)(1)(i). Students with arthritis may have severe joint pain, swelling, stiffness, fatigue, and difficulty with other major life activities such as sitting, writing, concentrating, bending, and lifting.

The Centers for Disease Control and Prevention released a 2023 study on arthritis among children, finding that approximately 220,000 children and adolescents had arthritis during 2017-2021. The report revealed the prevalence of the condition increased among those age 12 to 17.

The following chart lists classroom accommodations that can support students with arthritis.

Classroom accommodations for students with juvenile arthritis	
Assignments and homework	• Assigning a notetaker when needed • Allowing assignments to be submitted late without penalty during flare-ups or due to medical appointments • Allowing submission of oral answers for class and homework assignments
Books and materials	• Providing two sets of textbooks: one set for school and one for home • Providing or allowing the use of ergonomic school supplies • Providing photocopies of teacher notes written on the board
Attendance	• Excusing absences for missed school and tardiness when medically necessary • Adjusting attendance policy
Seating	• Providing or allowing cushions for chairs • Assigning preferential seating that provides the greatest amount of legroom • Allowing a portable heater at assigned seat • Assigning a seat at the back of the class or end of the row to allow student to stand
Assessments	• Allotting extra time for a test taken on a single day • Allowing submission of oral answers to a written test • Giving more objective tests rather than written essays

Source: The U.S. Department of Health and Human Services Centers for Disease Control and Prevention: Arthritis Among Children and Adolescents Aged <18 Years — United States, 2017-2021.

The Arthritis Foundation, https://www.arthritis.org/ ■

Would-be valedictorian can't seek modified transcript as accommodation

Case name: *Hyde v. Oliver*, 124 LRP 6237 (W.D. Tex. 02/22/24).

Ruling: A high school graduate with a disability could not sue a Texas district over its refusal to remove a failing grade from his transcript and retroactively declare him valedictorian. Citing the student's failure to exhaust his administrative remedies and the unreasonableness of the requested accommodation, the U.S. District Court, Western District of Texas dismissed the student's Section 504 and ADA Title II claims.

What it means: Few courts have addressed whether a district's duty to provide reasonable accommodations to a student with a disability includes modifying grading requirements for courses already completed. This ruling suggests that Section 504 and the ADA only require prospective accommodations to help students with disabilities benefit from a public education. Here, the student sought the removal of an "F" grade he earned in a dual credit course so that he could receive scholarships awarded to the school's valedictorian. By highlighting the retroactive nature of the relief sought, the district convinced the court that the requested accommodation was not reasonable.

Summary: A Texas district will not have to defend allegations that it discriminated against a high schooler with a disability when it denied a transcript modification that would make him valedictorian. The District Court granted the district's motion to dismiss the student's Section 504 and ADA claim after determining the requested accommodation was unreasonable. To establish a "failure to accommodate," a student must show the district knew about the student's disability and resulting limitations but intentionally failed to make reasonable accommodations. Chief U.S. District Judge Alia Moses noted that the student wanted the district to remove an "F" that he received the first time he took a dual credit public speaking class. The judge explained that the 5th U.S. Circuit Court of Appeals, which includes Texas, has not decided whether a modification of a high school transcript is a reasonable accommodation. However, the judge pointed out that the 5th Circuit has rejected "retroactive requests for leniency" in ADA employment cases. Furthermore, the judge observed, other Circuit Courts have ruled that changes to transcripts or disciplinary records are not reasonable accommodations in the context of employment or higher education. Judge Moses explained that the same rationale applied to the student's request to remove the failing grade from his transcript and declare him valedictorian long after his graduation. "In requesting the transcript change, the [parents] are not seeking prospective accommodation to help [the student] benefit from a public education but instead essentially seek remediation of a past unfavorable result," the judge wrote. The judge also held that the IDEA's exhaustion requirement applied to all claims for which the student sought non-monetary relief. Because those claims centered on the district's alleged failure to accommodate, the judge determined the student was seeking relief for a denial of FAPE. ■

Bully's false report of shooting threat casts doubt on student's suspension

Case name: *Zimny v. Geneva Cmty. Unit Sch. Dist. 304*, 124 LRP 5983 (N.D. Ill. 02/21/24).

Ruling: The parent of a 12-year-old boy with gross motor deficits could pursue disability discrimination claims against an Illinois district not only for unjust discipline but also for mishandling peer harassment. The U.S. District Court, Northern District of Illinois denied the district's motion to dismiss the parent's Section 504 and ADA Title II claims for disparate impact, deliberate indifference, and failure to accommodate.

What it means: School administrators need to be careful when investigating and addressing alleged incidents of disability-based peer harassment. If administrators punish a student with a disability for alleged wrongdoing based on his bullies' misrepresentations, they could expose their district to additional Section 504 and ADA claims for disparate discipline. Here, the parent claimed administrators suspended the student without investigation after one of his bullies falsely reported that he'd threatened a shooting. That suspension, along with the administrators'

504 quick quiz

Q: *Can cost justify not providing certain accommodations to students?*

A: Not usually. Districts have a legal obligation under Section 504 to fund the provision of whatever services are needed to deliver FAPE. 34 CFR 104.33(c). While under 28 CFR 35.105(a)(3) a district may argue that a requested accommodation might pose an undue financial burden, it does not limit a district's responsibility to provide reasonable accommodations. Even if an action is deemed to be an undue burden, the district still must take necessary steps to ensure students' needs are met. This includes accommodations to participate in extracurricular activities. In *Albuquerque (NM) Public School District*, 62 NDLR 85 (OCR 2020), a district denied a student with multiple disabilities equal access to an afterschool art program. OCR observed that the district questioned budgetary concerns, significant modifications needed in addition to one-on-one support, and payment for an aide for an afterschool activity that was not covered by an IEP. OCR found that the district should have engaged in an interactive process with the parents to determine effective modifications, aids, and services.

less-severe discipline of another schoolmate who struck the student with a hockey stick, raised questions as to whether the district punished the student more harshly.

Summary: Allegations that school administrators punished a middle schooler with gross motor deficits for nonexistent offenses while letting his bullies walk free supported the parent's disability discrimination claims against an Illinois district. The District Court denied the district's motion to dismiss the parent's Section 504 and ADA claims for disparate treatment, failure to accommodate, and deliberate indifference to peer bullying. U.S. District Judge Steven C. Seeger explained that the student's abnormal gait, which stemmed from his gross motor difficulties and made him a target for peer harassment, could qualify as a disability. Furthermore, the judge observed, the parent sufficiently connected the administrators' allegedly unjust discipline of the student to the student's disability. The judge cited one incident in which the assistant principal gave the student detention for reporting that a female schoolmate threw a bag of chips in his face at lunchtime. Weeks later, the judge noted, the principal gave the student two days of in-school suspension based on a schoolmate's false report that the student had threatened to shoot him. Judge Seeger pointed out that another schoolmate had received just one day of in-school suspension after he admitted to hitting the student with a hockey stick hard enough to cause bruising. "In other words, a nondisabled [schoolmate] who purposely injured [the student] got a punishment half the length of the punishment [the student] received for something he did not do," the judge wrote. The judge also found that the parent pleaded viable claims for peer harassment and failure to accommodate. Not only did the parent connect the schoolmates' alleged harassment to the student's disability, the judge explained, but the parent's requests for a safety plan and a home-schooling program appeared to be reasonable. The judge did not address the merits of the parent's Section 504 and ADA claims against the district. ■

Requiring teen to prove service dog's training obstructs access to school

Case name: *Butte (MT) Sch. Dist. No. 1*, 124 LRP 4485 (OCR 09/29/23).

Ruling: According to OCR, a Montana district may have violated Section 504 and Title II when it prohibited a high schooler with an undisclosed disability from bringing his service animal to school. To resolve the compliance concerns, the district pledged to revise its policies and procedures, conduct staff training, and take other corrective actions.

What it means: If a student with a disability submits a service animal request, educators should consider consulting legal counsel to ensure their responses are appropriate. This is because the ADA generally prohibits a district from requesting documentation of a service animal's qualifications, such as a certification or license. Although this teen's service dog jumped on a staffer during a campus visit, the district improperly required the student to provide proof of the service dog's training. Had the district immediately permitted the student to attend school with the service dog and monitored the dog's behaviors, it could have avoided the parent's discrimination claim.

Summary: Questions as to whether a high schooler's service animal received inadequate training most likely did not excuse a Montana district's decision to bar the animal from campus. Although the district's actions may have amounted to disability discrimination, OCR closed its investigation once the district entered into a resolution agreement. Under Section 504 and ADA Title II, a district must generally modify its policies, practices, and procedures to permit the use of a service animal by an individual with a disability. In determining whether an animal qualifies as a service animal, the district may only ask: 1) whether the animal is required because of a disability; and 2) what work or task the animal has been trained to perform. The district likely violated these requirements, OCR concluded. It noted that when the student requested to bring his service dog to school, the district expressed concerns that the dog "may not have been fully trained and/or was in training." The evidence showed that during a visit to the school, the service dog allegedly jumped on a school staff member. Subsequently, the district allegedly told the student it needed assurance from a trainer, a service animal certification, or other documentation of training before it could permit the dog on campus. Additionally, forms published on the district's website indicated that the district routinely asked for inappropriate information about students' service animals, such as the animal's breed, age, and insurance. These inquiries were not permitted under Title II, OCR highlighted. Before OCR could complete its investigation, the district resolved the complaint through a resolution agreement. It promised to revise its policies and procedures on service animals, conduct staff training, and issue a notice informing the public of its new service animal policies. The district also pledged to send a letter to the student assuring him that it will permit him to bring his service animal to school. ■

Behavior prompts Neb. district to relocate 3d-grader without IEP meeting

Case name: *Norris (NE) Sch. Dist. #160*, 124 LRP 4631 (OCR 09/27/23).

Ruling: A Nebraska district agreed to resolve OCR's concerns that it violated ADA Title II and Section 504 by significantly changing the placement of an interstate transfer student with a developmental delay. The district promised to review the child's IEP, reevaluate him, determine whether he required compensatory services, and issue a

memorandum to staff. OCR also expressed concerns regarding the district's delivery of service during the pandemic but found insufficient evidence of retaliation.

What it means: A district must reevaluate a student and convene the IEP team before it significantly changes his placement. Here, the district may have engaged in discriminatory, exclusionary discipline by deciding on its own to relocate the child in response to his behaviors. Because the change was to a more restrictive environment and would exceed 10 school days, it was a significant change in placement that should've first been proposed in an IEP team meeting, including the parents. Moreover, the team should've reevaluated the child's behavior needs to determine if the change was appropriate versus reactive or as discipline for behavior.

Summary: A Nebraska district may have discriminated by unilaterally changing the placement of an intrastate transfer student with a developmental delay without first reevaluating him or convening his IEP team. It will have to convene the IEP team to determine if compensatory education is due and reevaluate the third-grader. The child received a suspension due to his behavior. The district then relocated him to the life skills classroom located in the middle school, full-time, away from his third-grade peers, allowing him to work his way back to his original classroom. The parent contacted OCR alleging that the district discriminated by changing the child's placement without first reevaluating him or convening his IEP team. ADA Title II and Section 504 require districts to evaluate any student who needs or is believed to need special education before taking any action with respect to placement, OCR explained. Exclusion from the child's educational program for more than 10 school days, transferring him from one type of program to another, or terminating or significantly reducing a related service are significant changes in placement, it added. The district asserted that the IEP team didn't need to meet because it had only changed the child's schedule to ensure safety, not the services in his IEP. OCR expressed concern that the district may have significantly changed the child's placement by removing him from the general education classroom without first reevaluating him or convening the IEP team. The district made the changes on its own and transitioned the child to the middle school, a more restrictive environment than what his IEP called for, because of behavior issues, OCR noted. It expressed additional concerns that the district may not have made individualized decisions regarding how to meet the child's needs and provide services during COVID-19 quarantines. The district entered into a voluntary resolution agreement to resolve OCR's concerns. ■

Fla. district improperly places child in IAES for conduct related to ADHD

Case name: *St. Johns County Sch. Bd.*, 124 LRP 2679 (SEA FL 12/08/23).

Ruling: An administrative law judge found that a Florida district disciplined a child with ADHD for disability-related conduct and denied him FAPE in violation of Section 504. She directed the district to provide the child compensatory education, remove the sexual harassment charge from his disciplinary record, return him to his original placement, create a behavior plan, review his 504 plan, and train staff on manifestation determination reviews under Section 504. The ALJ also found that the district did not predetermine the MDR decision or violate its child find obligation.

What it means: MDRs must be conducted before a disciplinary change of placement for students with 504 plans. This district erred when it removed a child to an interim alternative educational setting after determining his misconduct was not a manifestation of disability. The district should retrain staff to understand that the MDR team needn't look for a pattern of behavior; a child's disability could manifest in misconduct even one time. And, staff should carefully code disciplinary offenses since removal to an IAES is only justified when a student possesses drugs, a weapon, inflicts serious bodily injury, or violates the code of student conduct.

Summary: A Florida district discriminated when it improperly placed a child with ADHD in an interim alternative educational setting for disability-related conduct. It will have to provide him compensatory education and return him to his original placement. The child had a 504 plan. On one occasion, the district coded his alleged inappropriate touching as sexual harassment that violated the student code of conduct. The MDR team found that the conduct was not a manifestation of his disability and placed him in an IAES. The parents alleged that the district improperly disciplined the child. Under Section 504, like under the IDEA, the district must conduct an MDR in connection with disciplinary actions that constitute a significant change in placement, the ALJ explained. It must determine whether the misconduct was caused by, or related to, the child's disability and, if so, return him to his original placement, she added. Despite that the child was fairly new to the school, district members of the MDR team focused on spotting a pattern of behavior, the ALJ observed. They seemed to believe that a pattern of sexual harassment or inappropriate touching needed to be established before they could find the conduct was a manifestation of disability, she pointed out. Several team members echoed the incorrect notion that, since it was a first-time offense, it couldn't possibly be a manifestation of disability, the ALJ observed. Nevertheless, the child wasn't capable of sexual harassment as charged; the necessary element of sexual intent was absent, and his conduct was a manifestation of his disability, she found. Further, he didn't meet the requirements of an IAES placement, the ALJ concluded. The incident didn't involve drugs, a weapon, or serious bodily injury, and inappropriate touching wasn't a violation of the school code, she reasoned. The ALJ concluded that the district disciplined the child for disability-related misconduct in violation of Section 504. ■