

Section 504 COMPLIANCE ADVISOR

ROUTE TO	

Your Guide to Understanding and Administering Section 504

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Anticipating many 504 meetings this fall? Find 6 ways to prepare

Summer passes quickly, and if district 504 teams are not ready to hit the ground running in August, it could mean legal trouble. Unprepared 504 teams might drag their feet on evaluations, resulting in child find failures.

Under Section 504 and Title II, a district must evaluate any student who needs or is believed to need special education or related services due to a disability. 34 CFR 104.35. In *Cecil County (MD) Public Schools*, 123 LRP 17083 (OCR 03/14/23), the district allegedly failed to start a student's evaluation process for more than 45 days. The Office for Civil Rights emphasized the need for districts to ensure that students are evaluated and provided access to meaningful educational services without unreasonable delay.

504 coordinators know that summertime preparation can be their secret to success. Coordinators should take several steps to ensure that school-level 504 contacts and teams know their roles and are ready to carefully consider the needs of students with disabilities prior to the start of the new academic year. A district 504 coordinator explains those steps below.

1. Provide training

Face-to-face professional learning for every school-based Section 504 contact is the first step in getting prepared for the new school year, said Tami Fisher, Section 504 coordinator for Volusia County (Fla.) Schools. Training can take place over the summer.

2. Review plans

Fisher also provides each principal and school-level 504 contact with a site-specific spreadsheet of students who receive accommodations through 504 plans. Once students have been identified at a school site, the team can begin reviewing their plans to determine if changes are needed, she said.

3. Take next steps for struggling students

Fisher said the site-specific spreadsheet includes information from an early warning system report so that accommodations can be reviewed and reevaluation considered for students with academic or behavioral challenges.

"Students who continue to struggle even with appropriate accommodations should be referred to the problem-solving process under multi-tier systems of support," she said.

(See **PREPARE** on page 3)

Did Calif. district discriminate by failing to provide ASL interpreter for summer program?

A student's IEP explicitly stated that she required a teacher of the deaf who was fluent in American Sign Language. It noted that she would be given interpreter services in the classroom, for school activities, and for all instruction occurring with spoken language.

The parent emailed various district staff members at least five times to request and obtain ASL interpreter services for her daughter while she attended a summer program. She received no response.

The district acknowledged receipt of a form, which prompted an inquiry to determine the availability of interpreters to provide services. It created an internal job vacancy post for the position. The student ultimately attended the summer program for its duration without interpreter services.

The parent contacted the Office for Civil Rights.

ADA Title II and Section 504 require that districts provide students with disabilities effective communication through the provision of various auxiliary aides or services. This provides students an equal opportunity to participate in, and enjoy the benefits of, the district's services, programs, and activities.

Did failures, deficiencies in district's procedures result in student not receiving effective communication?

A. Yes. The district lacked appropriate procedures to respond to requests for auxiliary aides and services and to retain necessary staff to provide those services.

B. Yes. The student didn't receive effective communication in the summer program.

C. No. The ASL interpreter job opening was advertised for the duration of the summer program, and the only applicant proved to be unqualified.

How OCR found: A.

In *San Diego (CA) Unified School District*, 124 LRP 8615 (OCR 11/02/23), OCR found sufficient evidence of disability discrimination. It failed to comply with Title II's and

Section 504's effective communication mandate, but it was "the lack of any significant substantive involvement of the district's special education department" that was "the most significant deficiency," OCR remarked.

The failure to provide an interpreter was largely attributed to the inadequate registration process and the equally inadequate method used to request accommodations in the program, according to OCR. The request went to staff who had no experience with or knowledge of the individualized needs of students with disabilities and couldn't properly determine how to provide effective communication, it found.

The special education department should have been involved with the registration, preparation, attendance, and participation in the course. Or, the district should've ensured equal access and participation, OCR explained. Importantly, the district never communicated with the parent about its efforts and offered any explanation for the failure to provide an interpreter.

B is incorrect. While the district failed to provide effective communication, OCR attributed the failure to its inadequate policies and procedures and failure to involve the special education team in the process. The provisions of the student's IEP expressly recognized the means of effective communication. The district was aware of it and was obligated to provide it through an ASL interpreter.

C is incorrect. The district's attempts to obtain an ASL interpreter were ineffective. Its efforts to ensure effective communication "fell far below what was required of it," and there was a significant lack of any coordination amongst various departments, any established process, and oversight to ensure an interpreter was provided.

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

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PREPARE (continued from page 1)

4. Manage calendar proactively

Encouraging Section 504 school contacts to add the annual review and three-year reevaluation dates to their calendars helps 504 meetings go smoothly, said Fisher.

She also recommended setting a reminder one month before the due date for the annual reviews and reevaluations. This makes it easier to coordinate meeting days and times.

5. Give teachers prep time

Once master schedules are locked in at each school in early August, Fisher notifies each teacher of any student on the roster who will be receiving accommodations through a 504 plan.

General education teachers must be ready to implement students' accommodations on the first day of school, she said. Giving teachers access to the plans a few weeks ahead of this date gives them time to review 504 plans and prepare.

6. Ensure everyone knows role

Fisher said her job is to ensure the district complies with Section 504 requirements. Every August, she brings 504 team members up to speed, so they will know how to avoid discriminating against students with disabilities.

"Each Section 504 school-based contact must meet with their administrators to define roles and responsibilities as they relate to Section 504," she said. ■

View new transportation requests as 'check-engine light'

A parent of a sixth-grade student with cerebral palsy just requested that the student ride the bus on Tuesdays and Fridays. Currently, the mother picks the child up from school every day. The parent explained that riding the bus two days a week will allow the student to get to a location where her stepfather can pick her up.

The request for transportation is a red flag for the student's team to reconvene. It's time to get under the hood and check things out. A student's IEP or Section 504 team is responsible for determining whether the student requires the related service of transportation between school and other locations in order to receive FAPE.

When parents of students with disabilities make requests for transportation, run them through the sieve of student need. IEP and 504 teams should examine whether filling the request would be necessary for the student to receive FAPE. Start by reconvening the IEP or 504 team and following the tips and questions below to get the conversation going.

Review relevant data

Does the request bring to light new information about the student? Might the student require the transportation service to access her public education to the extent of her nondisabled peers?

These are questions to pose when considering the parent's request. Take a look at the student's current plan; specifically, look at any related services and accommodations for transportation. Ask whether any new health or safety concerns would necessitate a change in the student's transportation services.

For example, a student who typically walks to school may be experiencing a flare-up of asthma and need new transportation services. A student with an orthopedic impairment who will undergo spinal surgery may need new busing accommodations, such as a bus lift or door-to-door transportation. If parents request these, be sure to specify what that means and whether it's required for FAPE.

Identify any barriers to access

Does the request reflect accommodations a student requires to ensure equitable access to the transportation offered by the school district?

Ask whether the request provides the student with equal access under Section 504. Students with medical or behavioral disabilities may require aides on the school bus to get through a long ride. For example, a student with a seizure disorder may require someone to assist with a medical emergency.

Have someone observe the student on the bus and collect data to determine whether a dedicated aide or nurse is needed. Recognize that new behavior concerns from parents can be corroborated through teacher input or school observations. Parents might request that the student have special seating arrangements or use headphones or a tablet on the bus.

Be sure to include transportation personnel in the team meeting to provide guidance on how a student can be accommodated on the bus.

Keep parent convenience to the side

Is the parent's request for transportation related to an actual need, or is it based on parent convenience?

Teams should not grant transportation accommodations or service requests out of sympathy or solely due to parent convenience. Focus on whether the request is related to the disability. For example, a parent who requests door-to-door transportation might need help getting the student ready for school in the morning. *See S.M. and E.M. v. Freehold Reg'l Sch. Dist. Bd. of Educ.*, 124 LRP 1731 (D.N.J. 01/16/24) (A New Jersey district did not deny an adult student with autism FAPE when it declined to send staff to his home every morning to help him get ready for school.).

In the opening example, the team needs more information about the parent's request for transportation two days a week. It should focus on whether the request is disability-related. Districts should propose a transportation evaluation if it has reason to believe the student's transportation needs have changed. Also, consider if there is an agreement currently in effect whereby the parent provides transportation in exchange for reimbursement. The team should determine if the student previously rode the bus. It will also need to review the district's transportation policy and consider student safety. ■

Getting accommodations right for students in honors-level classes

Students with disabilities cannot be excluded from honors classes based on their need for accommodations in the classroom, nor can they be denied accommodations while participating in such classes. The U.S. Department of Education Office for Civil Rights has made it clear that students are allowed accommodations as long as they don't amount to curriculum changes.

In *West Windsor-Plainsboro (NJ) Regional School District*, 112 LRP 50373 (OCR 08/07/12), a parent filed a complaint alleging the district denied students with IEPs in-class support in world language and honors courses without evaluating them individually. The district avoided a likely Section 504 violation by agreeing to make individual determinations regarding whether students with disabilities require in-class support as a related service in these classes.

Ensure your 504 team doesn't overlook the needs of honors-level students who need 504 academic accommodations. It's also important that team members know the difference between accommodations that help students access the honors class material and those that fundamentally alter the curriculum. An experienced former 504 coordinator explains how to stay on the right side of this line.

Appropriate accommodations

An appropriate accommodation helps the student access the material and show mastery of it, said Murray Bergman, who spent a decade as a 504 coordinator and now teaches in the Corpus Christi Independent School District in Corpus Christi, Texas.

In an honors-level class, an accommodation might be a cool-off period or a day of extra time to complete assignments, Bergman said. "I have also seen pre-printed notes help students be successful in mastering in-

formation in lecture settings."

Bergman shared other appropriate honors-level accommodations she has seen over the years, including the college board-approved accommodation of allowing time-and-a-half for oral administration. Others have involved the ability to give verbal instead of written responses, or vice versa, depending on the student's strengths.

Teams might consider having the student work along with an alternative assignment instead of group work if that is too hard for him to navigate socially, said Bergman. Or allow him to give verbal presentations at a different time to enhance confidence and focus. "The goal is not to give students a crutch, but to meet them where they are to allow them to show their intellect comparably to their non-impaired peers," she said.

Inappropriate accommodations

The difference between appropriate and inappropriate accommodations largely comes down to maintaining the honors-level standards, Bergman said. Accommodations should not change the curriculum. For this reason, she warned educators against modifying classwork so that it no longer aligns with teaching standards. Examples include substituting a lower-level reading text, decreasing assignments to the extent that they do not represent honors-level expectations, or giving multiple opportunities to redo work for an improved grade.

If extensive changes for a student impact the integrity of the class, the 504 team should proceed carefully, Bergman said. Because honors-level courses are taught at a rigorous pace, they simply may not be a good fit for a student whose disability means she learns more slowly. ■

Never include these phrases in a 504 plan

In a Section 504 plan, phrases such as “as needed,” “when possible,” or “just in case” can be interpreted in different ways by teachers, parents, and students, leading to confusion. Moreover, including these sayings may lead to implementation errors and OCR complaints, said Patrick T. Andriano, an attorney with Sands Anderson PC in Richmond, Va.

Ditch tired, vague language that makes 504 plans harder to put into practice for students with disabilities. Using specificity as your guide, ensure plans are individualized to students’ needs. The following thought-provoking questions and advice can help 504 teams avoid legal challenges.

Ask these questions

Section 504 teams should clarify what is needed for a student regarding accommodations, said Andriano. If a team decides a particular accommodation is needed, ask these questions to be as specific as possible:

- Why is this accommodation needed?

- When or in what circumstances will it be provided?
- Where will it be provided?
- How, specifically, will it be implemented?
- Who is responsible for implementing it?

Teams should do this for each accommodation to avoid ambiguous phrases, Andriano said. That way, when the team leaves the 504 meeting, there’s no uncertainty on the part of parents or teachers.

Accommodation descriptions can be concise, but they don’t have to be short, said Andriano. Take the time to individualize them to the student. In answering why an accommodation is needed, determine how it addresses the substantial limitation to the student’s major life activity, he said. To address where it will be provided, consider the setting or class in which the accommodation will be needed, whether this means PE or history.

“If the accommodation is specific to a class, teams should say that. Then the math teacher knows whether he is responsible for it,” Andriano said.

Consider the phrases mentioned earlier:

Three phrases to remove from 504 plans		
Phrase	Example	Why it’s problematic
“As needed”	“Student will have quizzes read aloud as needed.”	Teachers, parents, and students can interpret “as needed” in a myriad of ways. Relying on ambiguous phrases opens the door to implementation errors. Be specific about the “when, where, why, and by whom.”
“Just in case”	“Student will have extra time on tests just in case.”	Avoid accommodations for future needs. Instead, if the student requires an accommodation in the future, the 504 team can reconvene to reevaluate. Be specific about the “why, how, where, and when.”
“When possible”	“Student will have access to a private room to take quizzes when possible.”	Districts must ensure that accommodations are always available. If a team has identified that a student requires an accommodation, it is legally problematic to say that providing it was not possible. Be specific about the “when, where, and how.”

Use this specificity test

When developing a 504 plan for a student, apply the substitute-teacher test, said Andriano. This means an accommodation is so specific and unambiguous that a substitute teacher, who hasn’t attended a student’s 504

plan meeting, would know exactly how to implement it. If the accommodation doesn’t pass that test, it’s not specific enough, he said.

For example, an accommodation that provides a student with “preferential seating as needed” represents a

double-whammy of ambiguity, said Andriano. A teacher would wonder why the student needs preferential seating and what it should look like. If it's a concentration issue, maybe the student needs to be seated away from distractions

like a noisy air conditioning unit, he said. In the case of a vision issue, the student might need to be closer to the whiteboard. Or possibly a student in a wheelchair needs to be seated near the entrance and exit, Andriano said. ■

Don't make students with service animals jump through hoops to access school

When a student walks through the front door of a school with a service dog, a common reaction from school officials and employees may be trepidation.

Is the dog *truly* a service animal?

What if the dog is a pet or an emotional support animal in disguise?

While these questions pose valid concerns, educators may not always get the answers they seek before they must allow the student to access the school with her service animal.

According to Title II of the ADA, districts may ask only two limited questions when they seek to determine whether a dog or miniature horse qualifies as a service animal. Because any deviation from these two questions may violate federal rules and put the district in legal jeopardy, school officials should think twice before requiring students to jump through hoops in order to be allowed to access school with a service animal. Below, we will discuss which queries are likely to cross the line into discrimination.

Only 2 service animal inquiries permitted

Title II — along with its sister statute, Section 504 of the Rehabilitation Act — limits the types of questions that school officials may ask about a service animal. Specifically, the Title II regulations at 28 CFR 35.136(f) state that in determining whether an animal qualifies as a service animal, the district may only ask two questions:

1. Is the service animal required because of a disability?
2. What work or task has the service animal been trained to perform?

It's the second inquiry permitted by Title II that causes the most confusion. When a staffer asks what work or tasks a service animal has been trained to perform and the individual provides a vague description, it may be tempting to ask for proof. It may feel wrong to allow an animal — particularly a large dog or miniature horse — to enter the school building without tangible evidence that it won't cause problems or be a liability. However, OCR's interpretation of Title II may require staffers to do just that.

Don't require documentation, certifications

Title II specifically states that a district may not require documentation, such as certifications or licenses, to verify an animal's status as a service animal. 28 CFR 35.136(f). This rule applies even when school officials have concerns regarding the service animal's qualifications, training, or behavior.

For example, the Montana district in *Butte (MT) School District No. 1*, 124 LRP 4485 (OCR 09/23/23), became the subject of an OCR investigation when it allegedly asked a high schooler with a service dog to submit assurances from the dog's trainer. During a visit to the school, the service dog allegedly jumped on a school employee. These behaviors raised concerns that the dog "may not have been fully trained and/or was in training," the district explained. OCR concluded that the district's requests for documentation, including trainer assurances or a service animal certification, likely violated Section 504 and Title II.

Don't ask for demonstrations

If a district can't verify a service animal's qualifications through documentation, then surely it can ask for a demonstration of the service animal's training, right? Not quite. It appears that OCR prohibits districts from requesting demonstrations as well.

In *Eaton (CO) School District RE-2*, 124 LRP 4715 (OCR 09/18/23), school officials at a Colorado district were uncertain as to whether a dog accompanying a teenager with anxiety was a service animal or emotional support animal. The parent reported that the dog was trained to stay near the student during panic attacks and voluntarily submitted videos of the student working with the dog. Nonetheless, the superintendent asked the student to demonstrate in person the tasks the dog was trained to perform. OCR concluded that the district's inquiries were inappropriate and likely violated Section 504 and Title II.

Ultimately, the best way for a district to avoid claims of discrimination may be to open its doors to all purported service animals, even when the animal's qualifications are in doubt. After all, Title II allows districts

to remove a service animal from school if it's out of the control of the handler or if it's not housebroken. See 28 CFR 35.136(b). These provisions make it easier for

a district to appropriately remove an unruly or misbehaving service animal from campus than to outright deny a student's initial service animal request. ■

Quick Tips

Verify implementation of 504 accommodations.

Districts should have a system of checking with staff to make sure that they are implementing students' Section 504 plans correctly. Sometimes teachers can overlook accommodations like end-of-day check-ins with a student. Teams shouldn't wait until the next meeting to find out whether or not a student's plan is being implemented.

Ensure educators review, grasp 504 plan. Disseminating a Section 504 plan isn't enough to ensure teachers implement it. The 504 coordinator or another appropriate staff member should follow up with teachers, verify that they have reviewed the plan, and, if necessary, explain how to implement it.

Make decision on transportation as 504 team. When a parent requests transportation services under Section 504, the team should discuss it as part of a 504 meeting. Districts should avoid having one person make all the decisions or veto others' recommendations, whether that is a parent or administrator. When discussing transportation during the meeting, the 504 team should consider whether the transportation request is in the student's best interest, not the parents.

Break down acronyms for parents in 504 meetings. Even if parents use acronyms and jargon that signal to special education staff that the parent may have some experience, team members should still break down acronyms and start at a base level of knowledge in 504 meetings. This ensures that everyone on the team is communicating effectively.

Consider plan for eligible 504 student even if services unnecessary. If a student with a disability doesn't require accommodations or modifications in the classroom, the district may still develop a written Section 504 plan. The plan could explain why the student who is technically eligible doesn't need services, helping keep her on staff members' radar in case needs change.

Delete expiration date from 504 plan. Section 504 does not require an annual review, nor does the law require a 504 plan to be in writing. So, if your 504 plans include an expiration date, consider revisions. An expiration date suggests a student won't receive accommodations between this date and when a new plan is developed. Legally, however, the plan is still in effect.

Use discretion when evaluating child for 504 plan. ADA Title II and Section 504 don't prescribe the procedure for a 504 evaluation. Thus, the district has discretion as to how to evaluate a child for a 504 plan. Pennsylvania attor-

ney Mark Walz suggested that districts conduct a record review or an intensive evaluation. They should also check state law to ensure that the evaluation is conducted within a reasonable period of time, he advised.

Include vo-tech staff in trainings about IDEA, 504.

Instructors of vocational and technical programs may not have as much experience with IEPs and Section 504 plans as educators who teach academic courses. Reduce the likelihood of implementation disputes by including vo-tech personnel in any staff trainings related to the provision of FAPE to students with disabilities.

Investigate new diagnosis before completing IEP, 504 plan. When a parent informs a district that a student with a disability has a new medical diagnosis, the district should promptly make and document its attempts to obtain medical data. It should investigate how the diagnosed issue impacts the student's needs. It should do this before any IEP or 504 meeting intended to revise the student's plan. ■



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IDEA vs. Section 504 eligibility

Although both the IDEA and Section 504 offer protections to students with disabilities attending public schools, they establish different eligibility standards. To ensure they comply with both federal laws, districts must ensure their multidisciplinary teams can distinguish between the two eligibility standards. Share this with your teams to ensure they know when students are eligible for IEPs and when they are eligible for accommodations under a Section 504 plan.

To be eligible for an IEP under the IDEA:

1. The student must have at least one of the following disabilities:

- Autism
- Deaf-blindness
- Deafness
- Emotional disturbance
- Hearing impairment
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Other health impairment
- Specific learning disability
- Speech or language impairment
- Traumatic brain injury
- Visual impairment (including blindness)

34 CFR 300.8(a) through 34 CFR 300.8(c).

2. The student must need special education and re-

lated services due to the disability. 34 CFR 300.8(a)(1).

To be eligible for supports under a Section 504 plan:

1. The student must have a physical or mental impairment. 28 CFR 35.108; and 34 CFR 104.3(j)(2)(i).

2. The student's physical or mental impairment must substantially limit one or more major life activities.

Examples of major life activities include:

- Seeing
- Hearing
- Eating
- Sleeping
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Writing
- Communicating
- Interacting with others
- Walking
- Caring for oneself
- Standing
- Sitting
- Lifting
- Speaking
- Other activities

28 CFR 35.108 (c)(1); and 34 CFR 104.3 (j)(2)(ii). ■

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Section 504 scenarios: When is MDR for drug, alcohol offense needed?

When IDEA-eligible students violate drug or alcohol policy, a manifestation determination review must always be conducted before disciplinary action that will remove them to IAES. For 504-eligible students, an MDR may not be needed in some cases. This chart guides 504 teams in decision-making regarding MDRs following student drug and alcohol offenses.

Scenario for 504-eligible student	Is MDR needed before discipline?
Cocaine is found in Emily's locker. She admits to using it but denies selling it. She has been identified as having ADHD and has a 504 plan. She has not been identified as having a substance use disorder.	No. Possession and use of an illegal drug exempts the student from 504 protection.
John is caught sharing his anxiety medication with a classmate on school property. John obtained a prescription for the medication after being identified with PTSD. He has a 504 plan.	Yes , if planned discipline will constitute change in placement.
School staff find MDMA in the backpack of Damaris, who has a 504 plan for anxiety. She does not admit to either using or selling it and says she is simply holding it for friends.	Maybe. Drug use is frequently inferred from possession, but if being extra cautious, conduct the MDR.
Josh is caught drinking from a vodka-filled water bottle at school and showing signs of intoxication. He has been identified with both depression and alcohol use disorder. John has a 504 plan.	No. Even when the student's disability is related to a drug or alcohol violation, the school can still discipline without conducting an MDR.
Marcus, who has a 504 plan, has been selling ADHD medication in the cafeteria. He does not have a prescription for the medication and obtained the pills from his younger brother.	No. Distributing a prescription drug not prescribed for the student exempts him from 504 protection. ■

DECISIONS & GUIDANCE

Cal. district has reason to suspect disability but shortens child's school day

Case name: *San Mateo-Foster City (CA) Unified Sch. Dist.*, 124 LRP 5336 (OCR 09/07/23).

Ruling: The Office for Civil Rights noted concerns that a California district may have discriminated based on disability in violation of ADA Title II and Section 504. The district signed a voluntary resolution agreement to resolve concerns that it failed to timely evaluate a student for special education. It agreed to convene an IEP meeting to determine whether compensatory services are due, issue a guidance memo, and train staff. OCR will monitor the district's implementation of the resolution agreement.

What it means: Districts must conduct an initial evaluation when they have reason to suspect a student may have a disability and need special education or

else they discriminate. This district failed to evaluate although it had reason to suspect the student had a disability as early as the first week of school. Daily conversations with the parent about the student's behaviors, and the need for an aide, assessments, and observations should have prompted the district to initiate an evaluation earlier. Instead, it reduced the student's schedule for 48 school days based on the parent's concerns and schedule, rather than his individualized needs.

Summary: A California district may have discriminated against a student with an undisclosed disability by failing to evaluate when it had reason to suspect he had a disability. It must determine whether compensatory services are due.

During the first week of school, the principal discussed the student's behavioral issues, elopement, concentration struggles, and medical history with the par-

ent. He proposed a shortened class schedule, which the student followed for 48 school days.

The parent alleged to OCR that the district treated the student differently based on disability.

ADA Title II and Section 504 prohibit districts from discriminating based on disability, OCR explained. Districts must locate, identify, and evaluate any student who may have a disability and need services under the IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services, it added.

OCR found that the district had ample evidence to suggest the student had a disability and required special education during the first week of school. The principal spoke with the parent almost daily about the student's behavior, it noted. He assigned a Spanish-speaking aide to ensure the student's access to curriculum and prevent elopement. And, the principal asked staff about assessment and requested they conduct in-class observations, OCR observed. Further, the principal assisted the parent to complete a written request for an initial evaluation, it pointed out.

The district asserted that it reduced the student's schedule in consideration of the parent's concerns, accommodating her schedule, and keeping the student safe. However, the decision wasn't based on any change in the student's behavior, his safety, or needs, OCR pointed out.

The shortened school day resulted in the student missing instructional time for three months, constituted a significant change in placement, effectively removing him from regular education each day, and denied him FAPE, OCR found. ■

Pathologist's leave, sub's illness don't excuse gap in students' speech therapy

Case name: *St. Vrain (CO) Valley Sch. Dist.*, 124 LRP 8611 (OCR 11/28/23).

Ruling: The Office for Civil Rights determined that a Colorado charter school may have violated Section 504 and Title II when it allegedly failed to provide grade schoolers with disabilities speech therapy and specialized instruction. It also found that the school may have unlawfully retaliated against a teacher for her advocacy on behalf of students with disabilities. To resolve the potential violations, the school pledged to provide affected students with any necessary compensatory education, among other corrective actions.

What it means: An educator's absence, even one that is planned out in advance, can create gaps in students' special education or related services. To prevent such absences from impacting students' receipt of FAPE, a district should take multiple measures to fill any temporary vacancies. When this charter school learned that a speech-language pathologist was going on maternity leave, it should have considered hiring two or three substitutes. Retaining multiple interim pathologists to pro-

vide therapy in person or virtually may have ensured students continued to improve their speech skills even when one substitute became unavailable due to illness.

Summary: A Michigan district may have discriminated against students with disabilities and denied them FAPE by staffing their classrooms with teachers not certified in special education. It entered into a voluntary resolution agreement to resolve OCR's concerns. OCR received a complaint alleging that the district discriminated and denied students with disabilities FAPE because their teachers weren't trained in special education. Instead, the district allegedly staffed classrooms with non-certified substitute teachers or teachers who didn't have special education endorsements. OCR explained that the quality of educational services provided to students with disabilities must be equal to that provided to nondisabled students under ADA Title II and Section 504. Thus, their teachers must be trained in the instruction of students with disabilities, and appropriate materials and equipment must be available, it added. OCR noted that the district staffed only one of five classrooms with a certified teacher endorsed to teach students with disabilities.

The unexpected absence of a speech-language pathologist and her substitute may have posed logistical challenges, but it likely did not excuse a Colorado charter school's failure to implement appropriate speech services. Finding that the school may have denied FAPE to multiple students with disabilities, OCR closed its Section 504 and Title II investigation once the school pledged to provide any necessary compensatory services.

Under Section 504 and Title II, a district must pro-

504 quick quiz

Q: Are older students with disabilities entitled to participate in graduation ceremonies?

A: Yes. Older students with disabilities are entitled to participate in 12th-grade graduation ceremonies to the same extent as older students who do not have disabilities. Section 504 limits a school district's ability to exclude nontraditional-age students with disabilities from customary commencement exercises for 12th-graders. In *Letter to Runkel*, 25 IDELR 387 (OCR 1996), OCR elucidated the right of students with disabilities who meet graduation requirements because of post-12th-grade education to participate in graduation ceremonies. "Under Section 504 or Title II, a student who has met graduation requirements, irrespective of age, cannot be treated differently on the basis of disability. A qualified student with a disability is eligible to participate in whatever graduation ceremony a student of similar age without disabilities would be eligible to participate," OCR wrote.

vide FAPE to all eligible students with disabilities in its jurisdiction. The district can achieve this by properly implementing a student's Section 504 plan or an IEP developed under the IDEA. The charter school may have violated this requirement, OCR determined.

OCR learned that during the fall 2022 semester, the school's speech-language pathologist was out on maternity leave. Although the school hired a substitute pathologist to implement students' speech-language services in the interim, that substitute experienced a health complication and was absent for a month. This prevented students from receiving necessary speech services from November through December 2022, OCR highlighted. Because the school admitted that it failed to provide speech services during the full-time pathologist's maternity leave, OCR concluded that a FAPE violation occurred.

OCR also expressed concerns that the school denied FAPE to a group of students in kindergarten through second grade. It noted that during SY 2022-23, a special education teacher missed a total of 12 school days. Because there was no evidence that the students in the teacher's class received appropriate instruction during her absence, OCR determined that the school may have failed to properly implement their IEPs or Section 504 plans.

To resolve OCR's concerns, the school entered into a resolution agreement. It pledged to provide compensatory or remedial services to all students who were impacted by the absence of the speech-language pathologists and the special education teacher, among other corrective measures. ■

Bus driver shortages, fiscal responsibility can't drive transportation decisions

Case name: *Forest Ridge (IL) Sch. Dist. 142*, 124 LRP 8641 (OCR 11/03/23).

Ruling: The Office for Civil Rights noted concerns that an Illinois district failed to consider modifications, accommodations, or supports to enable a student with an undisclosed disability to participate in afterschool athletics. The district entered into a voluntary resolution agreement to resolve OCR's concerns that it violated ADA Title II and Section 504. It vowed to convene an IEP meeting to determine how to provide transportation home after extracurricular activities, train staff, and reimburse the parents for transportation costs.

What it means: Students with disabilities must be afforded an opportunity to participate in nonacademic and extracurricular activities equal to their nondisabled peers. Here, the district didn't provide transportation home for a student after sports practices and games although his IEP included transportation as a related service. It incorrectly relied on bus driver shortages and the "need to be fiscally responsible." But available resources and budgetary considerations cannot drive

a district's decision regarding special transportation. Instead, the student's IEP team should've discussed accommodations or supports that could have been provided to enable him to participate in afterschool sports.

Summary: A student with an undisclosed disability may have been discriminated against when his Illinois district refused to provide transportation home from his afterschool cross country practices. The district will have to reimburse the parents for transportation costs and determine how to provide transportation.

The student's IEP included transportation as a related service. He participated in extracurricular athletics. The parents requested transportation to and from practice and games.

The district informed them that the transportation decision was tied to whether it provides transportation to all students, and there was no educational need for the student to participate in an extracurricular activity. And, it explained, it didn't have an activity bus or provide transportation home from the school for extracurricular activities due to bus driver shortages and "fiscal responsibility."

The parent contacted OCR alleging discrimination based on disability. ADA Title II and Section 504 requires school districts to provide students with disabilities an equal opportunity to participate in nonacademic and extracurricular services and activities, OCR explained. That means a district must make reasonable modifications necessary to ensure a student with a disability has an equal opportunity to participate, unless it would be a fundamental alteration to its program, it added.

OCR noted that IEP meeting notes were silent regarding who was responsible for providing transportation for extracurricular activities. It pointed out that the IEP team didn't analyze whether busing the student home after practices would've represented an undue burden or fundamental alteration. Nor did it discuss whether his participation in sports was necessary to fulfill an educational need or goals, or whether he needed additional supports to participate, OCR noted.

OCR expressed concerns that the district failed to consider modifications to the student's IEP and his transportation schedule to allow him to participate. The bus could've taken him home at 4:00 instead of 2:30 so that he could receive an equal opportunity to participate, OCR suggested. ■

Mom's objection to nut ban, sharing of eating disorder should trigger evaluation

Case name: *Eugene (OR) Sch. Dist.*, 124 LRP 8721 (OCR 11/15/23).

Ruling: The Office for Civil Rights expressed concern that an Oregon district may have discriminated by delaying to evaluate a child, in violation of ADA Title II and Section 504. OCR will monitor the implemen-

tation of a voluntary resolution agreement requiring the district to review and revise its policies, notify and train staff, and issue a letter to the parent.

What it means: A district cannot delay to evaluate a child when it has reason to suspect disability. In this case, the district may have waited too long to evaluate a child after the parent objected to a school nut ban and shared that her child had a disability and an eating disorder. Districts should remind staff that dietary restrictions may relate to disability. But here, the fact that the parent specified that the child's dietary restrictions related to a "disability" and an eating disorder should have triggered a documentation and a request to evaluate under Section 504.

Summary: An Oregon district may have failed to timely evaluate a child for a 504 plan after the parent informed it that the child had a disability and an eating disorder. The district vowed to revise its policies and procedures, including those regarding dietary needs.

The parent contacted the district, stating that she disagreed with its decision to ban nuts from school lunches and indicating a need to accommodate her child for reasons related to disability. In a subsequent communication with staff, she identified the child as having an "eating disorder." Then, the parent contacted OCR alleging that the district failed to timely convene a 504 meeting to address her child's disability-related needs.

OCR explained that ADA Title II and Section 504 prohibit discrimination based on disability. They require districts to conduct an evaluation of any student who, because of disability, needs or is believed to need special education or related services before taking any action with respect to initial placement, it added.

OCR noted that the district began evaluating the child for a 504 plan and determined that the child was eligible. However, it had a concern that the district failed to timely evaluate. To resolve OCR's concern, the district agreed to review and revise its policies, procedures, and practices, including with reference to dietary needs, medication or treatment orders, nursing plans, individual health care plans, and emergency health plans. It also agreed to train staff concerning the new policies. ■

Texas district to clear up confusion about when SROs participate in restraints

Case name: *Denton (TX) Indep. Sch. Dist.*, 124 LRP 11692 (OCR 04/11/23).

Ruling: The Office for Civil Rights identified concerns regarding a Texas district's use of restraint on students with disabilities. To resolve OCR's concerns that it discriminated and denied students FAPE in violation of ADA Title II and Section 504, the district agreed to convene IEP and 504 teams to reevaluate identified students' needs. It also promised to timely provide any compensatory ser-

vices necessary and review and revise its policies and procedures governing restraint and its recordkeeping and monitoring system.

What it means: Districts must address the use of restraint on students with disabilities to determine whether it impacted the student's receipt of FAPE. Here, school resource officers who participated in restraints of students with disabilities may not have had training on the use of restraint or nondiscrimination obligations. And staff were confused about restraints, particularly when SROs were involved. The district should've trained staff, including SROs, on the use of restraint, ADA and Section 504 prohibitions on discrimination, the role of SROs, district policies, and the need to clearly document and report the use of restraint.

Summary: A Texas district's use of restraint may have discriminated and denied students with disabilities FAPE. The district must determine if compensatory services are necessary and review and revise its policies and procedures governing restraint.

OCR conducted a compliance review. It identified concerns that the district's restraint practices may have denied FAPE to students with disabilities.

When a student's behavior interferes with education such that it would cause the district to suspect disability under ADA Title II and Section 504, the district must evaluate the student, OCR explained. A school's repeated use of restraint or seclusion may suggest the student's current program isn't sufficient to provide FAPE. Further, the district is responsible for discrimination that school police or SROs may engage in, it added.

First, OCR pointed out that campus SROs were participating in restraints without receiving training on the use of restraint and nondiscrimination obligations regarding students with disabilities. Further, staff were confused regarding what might constitute a "restraint," particularly when an SRO was involved, it noted.

Second, OCR was concerned that the district restrained students who were not yet eligible with a disability multiple times before evaluating them. The frequency and duration of restraints and the failure to evaluate were also of concern, it remarked. Also, students with emotional and behavioral disabilities were restrained significantly more often than other students with disabilities, OCR noted.

Finally, OCR had concerns that the district didn't accurately document the use of restraint or consider whether to convene an IEP or 504 team meeting to reevaluate the restrained student's possible need for a different placement or services to receive FAPE. It identified several significant recordkeeping issues. Poor, confusing recordkeeping could lead to problems regarding the repeated restraint of students not yet identified with disabilities, OCR explained. And, the district wasn't accurately collecting and reporting data or providing notice to parents. ■