

Section 504 COMPLIANCE ADVISOR

ROUTE TO	

Your Guide to Understanding and Administering Section 504

VOLUME 28, ISSUE 9

NOVEMBER 2024

IN THIS ISSUE

Did purported name-calling, verbal altercation trigger district's duty to investigate disability-based harassment? 2

Make sense of accommodations for students with sensory issues.....3

Unmask when defiance is camouflage for anxiety 4

Respond appropriately to doctor's note regarding home instruction5

Ignoring duration, severity of temporary impairment could mean child find failure 6

OCR offers tips for identifying, removing Title IX reporting barriers7

Steps for responding to disability-based bullying complaint..... 8

504 lawsuit fails to show district knew boy was abused at charter school..... 9

Telepresence robot won't be standing in for 6th-grader with anxiety 9

Safety concerns, requests for 1:1 aide suggest peer assault was preventable 10

Disenrolling student after 'devastating' event enables 504 money damages11

Failure to accommodate blind teen in Excel course hinders access, FAPE 12

Act now! Follow these steps when creating 504 plan

The regulations implementing Section 504 of the Rehabilitation Act are sparse when compared to those implementing the IDEA. Because the law isn't clearly spelled out, the best way to avoid an Office for Civil Rights investigation for alleged discrimination is for 504 coordinators and teams to follow standard procedures to ensure that a child receives an appropriate 504 plan.

Follow these steps provided by a 504 coordinator to remain legally compliant during the creation of an effective 504 plan.

Step 1: Refer students for evaluation. There are times when parents are aware of their child's condition and refer them for a 504 evaluation, said Jana Csenger, 504 and psychological services coordinator at Collier County (Fla.) Public Schools. For example, a parent who knows that their child was diagnosed with ADHD may notify the school to seek support and services.

However, not all parents are forthcoming, and not all disabilities are obvious. That's where a district's child find duty comes into play. Section 504 states that a district must evaluate students "who, because of handicap, need or are believed to need special education or related services" to fulfill child find obligations. 34 CFR 104.35(a).

If a teacher suspects that a student may have a disabling condition that might qualify him for a 504 plan, have data on standby supporting the reason for referral, she said. "Gather teacher information, parent information, medical information, and a variety of sources" to determine "whether or not the student is eligible for a 504 plan," she said.

Step 2: Obtain consent from parents. Although Section 504 has fewer parent involvement requirements than the IDEA, "it's best practice to involve the parent every step of the way" especially when it comes to obtaining consent to begin the evaluation, Csenger said. 504 teams should call parents about the referral for an evaluation and should email them at each step during the referral process, said Csenger.

Parents should be invited to participate in the process and provide input during the 504 evaluation. They should have a say in their child's education, she said.

Step 3: Conduct evaluation with 504 team. 504 team leaders must ask themselves and other team members: "Does the student have a physical or mental impairment? Does that impairment affect one or

(See **STEPS** on page 3)

Did purported name-calling, verbal altercation trigger district's duty to investigate disability-based harassment?

During the school year, a student with an undisclosed disability was involved in multiple conflicts with classmates. In one instance, one classmate allegedly encouraged the student to misbehave. Allegedly, when the student engaged in the misconduct, the classmate and other peers called the student names. During a second incident, the student and a classmate purportedly “mess[ed] around” until the horseplay turned into a verbal altercation. The student never claimed that these incidents were based on his disability.

When the district convened an IEP meeting for the student, the parent expressed concerns that the student was experiencing “some bullying issues with peers.” However, neither the student nor the parent reported the alleged harassment to school officials. Because teachers and other personnel did not witness any peer harassment, the district never investigated the alleged incidents.

The parent filed an OCR complaint, alleging that the district discriminated against the student when it failed to properly address the disability-related harassment. The student told OCR that at least six classmates “pick on him.”

Under Section 504 and Title II, a district must investigate any reported or known incidents of disability-based harassment and take steps to ensure the harassment doesn't recur. *See* 34 CFR 104.4(a); and 28 CFR 35.130(a).

Did the Iowa district comply with the anti-harassment provisions of Section 504 and Title II?

A. No, the student was the one who engaged in misconduct.

B. Yes, the district did not have notice of the alleged harassment.

C. Yes, the incidents didn't rise to the level of bullying.

How the Office for Civil Rights found: B.

In *Central Lee (IA) Community School District*, 124 LRP 30413 (OCR 02/24/23), OCR determined that an Iowa district didn't engage in discrimination when it allegedly failed to investigate the harassment of a student with a disability. In this case, the student was allegedly involved in at least one verbal altercation with a peer and another incident in which multiple classmates called the student names. However, there was no evidence that the student or his parent ever reported these incidents. Moreover, no personnel interviewed by OCR witnessed these events. Because the district didn't have notice of the alleged harassment, it didn't violate Section 504 or Title II when it allegedly failed to investigate the matter, OCR concluded. Additionally, while the student “had some negative encounters with peers,” OCR noted that these incidents were related to his misconduct and not his disability.

A is incorrect. If a district is aware of disability-based harassment, it must investigate the alleged incident regardless of whether the student engaged in misconduct during the incident.

C is incorrect. A district is obligated to investigate disability-based harassment even if it doesn't rise to the level of bullying.

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

SECTION 504 COMPLIANCE ADVISOR

Publisher:

Kenneth F. Kahn, Esq.

Chief Marketing

Officer:

Jana L. Shellington

Vice President,

Education:

Julie J. Kline, Esq.

Managing Editor:

Celine Provini

Editor:

Janiece Branson

Legal Editor:

Amy E. Slater, Esq.

Copy Editor:

Jack White

Product Group Manager:

Katie Cannistraci

Production Director:

Joseph Ciocca



Copyright © 2024 LRP PUBLICATIONS

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

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

STEPS (continued from page 1)

more major life activities? Do they need accommodations in order for their educational needs to be met?” said Csenger.

Additionally, teams will analyze any rating scales from teachers and parents that express concerns such as inattention or impulsivity for a student with ADD, she said.

A medical diagnosis or input from a health care professional would also strengthen a student’s need for a 504 plan, Csenger said.

If the questions about disability, major life activities, and accommodations are answered in the affirmative, and there is relevant evidence, then the 504 team would continue to create the accommodation plan, she said.

Step 4: Create an accommodation plan. Once the team has completed the previous steps, “the team will sit and start discussing what are the limitations

and how might we accommodate those limitations” that a student faces, said Csenger. Developing an accommodation plan based on a student’s needs helps to “level the playing field for that kiddo,” said Csenger.

In the 504 meeting, parents may vocalize a few accommodations that they think would benefit their child, she said. For example, some parents are particularly interested in having their child receive extra time as an accommodation. This may enable the student to bring home assignments that were not completed in class due to distraction, she said.

Another common accommodation that parents favor is preferential seating in the classroom. This accommodation places the student “close to the point of instruction to eliminate distractions,” said Csenger.

After the accommodation plan is written, distribute copies of the completed 504 plan to parents and staff. Remember to monitor the student’s development and check for implementation. ■

Make sense of accommodations for students with sensory issues

When a student with a disability has an accommodation in his Section 504 plan for sensory issues, it’s not in there as a suggestion.

But many educators view accommodations for sensory issues as something to be delivered if a student has a meltdown rather than as a way to maintain the student’s sensory regulation.

“One of the biggest issues is a lack of training and a lack of communication about what an accommodation is and why it is important,” said Lindsay Eubanks, an occupational therapist and community and family field training coordinator at the Kentucky Autism Training Center. “Everyone who comes in contact with students [with sensory issues] in all settings should be aware.”

Section 504 teams should ensure students’ 504 plans clearly specify the sensory accommodations they need and note that they need them regularly to avoid disturbing and missing instruction. Ignoring students’ sensory needs can result in inappropriate discipline and FAPE denials. Educators shouldn’t just deliver accommodations when students’ sensory needs escalate. They should also recognize that students’ sensory needs can change over time. Follow these recommendations to ensure students properly receive sensory accommodations in their 504 plans.

Address need for sensory input or relief

If a student craves sensory stimulation throughout the day, he may need breaks to stand, move around the room, take a walk outside the room, or touch or manipulate items with different textures, Eubanks said. “They need to be scheduled, not just ‘as needed,’” she said. “‘As needed’ may depend on when the teacher can do it, not when the student needs it.”

Students who recoil from sensory input may need a change of environment, Eubanks said. A student may become overwhelmed every time she has to go to the noisy cafeteria, so she may need the accommodation of a quiet area for lunch.

Recognize that some students may be both seekers and avoiders, depending on a situation, Eubanks said. They may require a range of accommodations or accommodations that help in multiple ways. For example, a student may need to lift something heavy, such as a backpack with books, when she is overstimulated or understimulated. Or she may need to do chair or wall push-ups. Another student may prefer chewing or sucking gum (if allowed), a straw, candy, or other chewable or suckable items for sensory input or relief. Students with and without disabilities sometimes chew on the strings of their hoodies to calm down. Special paracord is available specifically for chewing or sucking.

Document accommodations appropriately

Beware of using vague language when noting accommodations in a student's 504 plan, Eubanks said. Phrases like "as needed" and "may need access to" will likely lead to poor implementation. Instead, convey the importance of regularly implementing accommodations to ensure students remain regulated and avoid sensory overload. "Don't treat these sensory tools as a Tylenol," she said. "Treat them as a vitamin. You take a vitamin to try to prevent an illness." Instead of saying, "He may have access if he needs a sensory break," say, "He needs a two- to three-minute movement break every 15 minutes," Eubanks said.

Regularly check efficacy of accommodations

Don't assume that specific accommodations are going to work forever, Eubanks said. Regularly check that they are helping a student and try different things to see what works well.

Also resist assuming that the student will be able to tell you if something isn't working, Eubanks said. He may not be able to express what he needs. "The teacher needs to be the one to implement it," she said. "The teacher can't say, 'He never asks for it, so he's not using it.'"

Keep in mind that when overstimulated, some students may behave as if they have a trauma response of fight, flight, or freeze, Eubanks said. A teacher must prompt the student to use his accommodations, not ask if he wants to use them.

Accommodations for sensory issues

Sensory modulation challenges	Sensory discrimination challenges	Sensory-based movement challenges
Skills to build: <ul style="list-style-type: none"> • Using appropriate ways to plan ahead or respond when input feels overwhelming. • Finding ways to pay better attention to sensory input. • Learning how to appropriately satisfy need for extra sensory input. 	Skills to build: <ul style="list-style-type: none"> • Understanding sensory input (the what, where, and intensity of input). • Telling the difference between objects based on how they feel. 	Skills to build: <ul style="list-style-type: none"> • Ability to plan and organize novel movements. • Postural control, balance, and stability.
Accommodations: <ul style="list-style-type: none"> • Schedule sensory breaks. • Provide access to fidget toys, sensory table, chew necklace, noise-canceling headphones, etc. • Schedule "heavy work" tasks, such as lifting a backpack of heavy books. 	Accommodations: <ul style="list-style-type: none"> • Provide various sensory activities in the classroom or a separate room to differentiate sensory experiences. • Offer visual aids to clarify which sensory strategies help with which issues. 	Accommodations: <ul style="list-style-type: none"> • Schedule physical games and other activities to promote more control. • Provide alternative seating, such as an exercise ball chair or wiggle cushion. ■

Unmask when defiance is camouflage for anxiety

Picture a student refusing to pick up his materials before an assessment and instead throwing his pencil and walking out of the room.

The student's defiance may not stem from a desire to disregard the rules and disrupt the classroom. He may just be afraid to take the test and not know how to express it.

"If a student's feeling anxious, it's going to be related to something they care about," said Michael C. Selbst, executive director at Behavior Therapy Associates in Somerset, N.J. "We need to be able to validate that feeling and acknowledge that the student must really care about this. We talk a lot about defiant and oppositional behavior, and a lot of times

it doesn't really honor the communication that is behind the behavior."

Section 504 or IEP teams should ensure they look beyond a student's behavior to determine if what looks like defiance is actually anxiety. Assuming a student is being willfully defiant without looking at what's behind the behavior can lead to inappropriate discipline and FAPE denials under Section 504 and the IDEA. See how to tell when a student's defiant behavior actually stems from anxiety and how to address that anxiety in a Section 504 plan or IEP.

Decode what behavior means

Don't assume a student's behavior is willful defiance, Selbst said. Consider what he is experiencing at the time he engages in the seemingly disobedient behavior. The student may be trying to communicate something with the behavior. "What is the behavior telling us?" he said. "In many cases, the student may be experiencing significant anxiety. At the very least, I would describe it as discomfort. A student may be feeling extremely uncomfortable about a social situation or an academic demand."

Build connections with student

The student may act out and demonstrate defiant behavior because she doesn't feel connected enough to staff members to express what she is truly feeling, Selbst said. Adults who work with the student should make an effort to build rapport with her so the student will be more likely to work with them. "Without that relationship, it's harder to collaborate," he said. "It's critical to form those relationships with students."

Document accommodations, services

It may be helpful to include in a Section 504 plan or IEP that a student will meet with a counselor as needed, Selbst said. But even better may be to stipulate that the student will check in with a counselor on a regular basis to establish and strengthen a relationship before his anxiety escalates and he is in crisis. "Regularly scheduled opportunities to meet with that adult may be helpful," he said.

The plan could also discuss the need for emotional regulation training to help the student build self-control, Selbst said. The student can also improve how he communicates his feelings. "Help students understand that they can be sad, worried, and anxious *and* still be safe and respectful," he said. "Within a 504 plan or IEP, it's really important to give students opportunities to role-play sample situations." They can practice how to express their emotions and how to ask for a break, Selbst said. They can practice experiencing an emotion and maintaining self-regulation.

Students can also hone their problem-solving skills, Selbst said. Students can learn mindfulness to help themselves become grounded. They can get connected with their senses. "It's not about trying to distract from the anxiety or get rid of the anxiety," he said. "It's about being able to be in a better place where you can be accepting of, 'This feels uncomfortable, and I'm able to step back and notice what I'm experiencing.' Students learn to change their relationship with the discomfort or anxiety or worry or sadness." ■

Respond appropriately to doctor's note regarding home instruction

When parents provide a doctor's note recommending home instruction, it indicates their concern that their child faces significant medical or psychological challenges. Responding to such communications with sensitivity and thoroughness is crucial for 504 teams, said Jennifer O'Malley, executive director of Irvine Unified School District's Special Education Local Plan Area in California.

Like the IDEA, Section 504 contains a least restrictive environment requirement, providing that a school district shall place a student with a disability in the regular education environment unless it is demonstrated by the district that the education of the student in the regular environment with the use of supplementary aids and services cannot be satisfactorily achieved. 34 CFR 104.34(a). This includes the right to home instruction if deemed nec-

essary for the student's well-being and educational progress.

504 teams should refrain from premature assumptions about requests for home instruction and understand that neither a doctor's recommendation nor a diagnosis determines placement. The team should take the following steps to decide if the student needs services in the home setting.

Investigate request

A first step is convening the 504 team to review the letter, O'Malley said. Carefully review the doctor's note and assess the validity and necessity of the recommendation, she said. This is crucial for making an informed decision. "We generally hold an IEP meeting when we receive the request, we talk about it, and we ask the parent for the release of information."

Next, O'Malley said, the team often reaches out to the doctor to request additional information and then reconvenes to discuss it. The treating physician's input is critical. "Make sure it's the treating doctor for the condition being communicated about," said O'Malley.

For example, if the student has anxiety, make sure the doctor writing the letter has expertise in this condition and that anxiety is mentioned in the letter. O'Malley said this helps the team determine whether the student's specific needs can be met within the school environment or require home instruction.

Avoid assumptions, misstatements

The 504 team should rely on the medical and educational information gathered, said O'Malley. "Be cautious about not judging the situation but rather focusing on whether [the student's] educational needs can be [met] within a physical education setting."

Conveying empathy also goes a long way when communicating with parents, said O'Malley. "If a student has a significant medical need that prevents coming to school, be sensitive about that and [show] under-

standing at all steps in the evaluation process," she explained.

Steer clear of statements that create legal risks and that parents might perceive as insensitive, added O'Malley. For instance, without proper evaluation, don't suggest that a student's medical condition is not severe enough for home instruction. Always focus on educational needs, O'Malley said. "We never want to communicate a negative outcome to the parents prior to even determining qualification for home instruction."

Document evaluation results, placement decision

"We're required to document the [placement] decision and the rationale behind it, ensuring that we meet legal standards and provide appropriate accommodations," said O'Malley.

Beyond legal compliance, the team has an ethical responsibility to act in the best interest of the student, O'Malley said. This includes being transparent with parents, considering the student's overall well-being, and making decisions that support her educational progress. ■

Ignoring duration, severity of temporary impairment could mean child find failure

Students with disabilities may need Section 504 plans to ensure they receive FAPE. But what if a disability is not permanent?

The Office for Civil Rights has stated that a temporary impairment does not constitute a disability under Section 504 unless it's severe enough to substantially limit one or more major life activities for an extended period. *Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Educ. of Children with Disabilities*, 67 IDELR 189 (OCR 2015).

Although 504 teams may not often encounter cases of temporary student impairments, they should not overlook a possible need for accommodations. Temporary impairments should be considered on a case-by-case basis as dictated by student needs. Review the following evaluation steps that can prevent child find errors for students with temporary impairments.

Acknowledge student's impairment

"We want to be proactive to avoid any child find issues," said Michelle Todd, school attorney with Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP in Illinois.

School staff should acknowledge if a child has experienced a significant life event that may warrant evaluation and accommodations, she said. "We're having conversations with parents. We're saying, you know, 'There could be a 504 eligibility issue here,'" Todd said. In some cases, students or parents will bring impairments such as injuries or surgeries to the teacher's attention, she said.

Speak to parents, medical professionals

Gathering medical documentation related to the temporary condition from parents and medical staff is key to determining whether a student may need 504 accommodations, Todd said. The team should first ask for a release to talk to the student's treating physician or other health care provider. This is even more crucial when a student has an emergency care plan due to her condition, said Todd. In conversations with medical professionals, she said teams must gain insight about:

1. The duration (or expected duration) of the impairment; and
2. The extent to which it limits a major life activity of the affected individual.

A thorough understanding is particularly important in cases of episodic conditions that involve symptom remissions and flare-ups.

**Review documentation,
make determination**

In addition to considering medical records, 504 teams should promptly review all documentation pertaining to the student's academic performance and behavior, Todd said. "You're looking at the student's grades, attendance, any sort of disciplinary referral, and behavior management that you're doing" to see how a student is performing.

Team members are then ready to discuss a course of action for the student with a temporary impairment, said Todd. The 504 team must decide if the student's impairment limits a major life activity or if the impairment extends over six months. They must also de-

termine if accommodations are needed. For example, Todd saw a case where a student's bad break in his leg resulted in an extensive orthopedic intervention and necessitated accommodations.

Indeed, districts must proceed without delay in such cases. In *Anaheim City (CA) School District*, 115 LRP 19319 (OCR 2014), the district resolved allegations that it denied the student with a temporary impairment FAPE under Section 504. The student had a broken leg and needed to use a wheelchair temporarily, yet the district took five weeks to convene an evaluation meeting. OCR administratively closed the complaint once the district provided the accommodation of an assigned staff member to aid the student's participation in lunch and recess. OCR did, however, recommend that the district train staff on 504 evaluations, including the requirement to conduct them within a reasonable time frame. ■

OCR offers tips for identifying, removing Title IX reporting barriers

Recently released guidance from the U.S. Department of Education could help Title IX coordinators around the country to carry out their responsibilities more effectively.

ED's Office for Civil Rights made two new Title IX resources available in September:

1. **2024 Title IX Regulations: Impact on Title IX Coordinator Duties.** This resource covers issues such as the role of the Title IX coordinator, the coordinator's duty to respond to sex discrimination, and training and recordkeeping requirements.

2. **2024 Title IX Regulations: Nondiscrimination Based on Pregnancy or Related Conditions & Parental, Family, or Marital Status.** This resource addresses protections and supports available for students who are pregnant or who have pregnancy-related conditions.

The first document does not mention students with disabilities at all, and the second mentions students with disabilities only in passing. Still, the guidance in these documents can help Title IX coordinators ensure that the statute's protections apply to all students. For example, the resource on Title IX coordinator duties lists potential barriers to reporting sex discrimination and offers tips for identifying and removing those barriers. Those tips include:

- Conducting surveys of students and employees about barriers to reporting.
- Publishing the Title IX coordinator's contact information more frequently and prominently.

- Relocating the Title IX coordinator's office to a more visible, central, and accessible location.

- Providing enhanced training for employees with Title IX responsibilities to ensure they are free from conflicts of interest and do not discourage the reporting of possible sex discrimination.

- Developing and circulating user-friendly Title IX materials.

The resource on pregnancy discrimination notes that while pregnancy itself is not an impairment under Section 504 or ADA Title II, some pregnancy-related conditions could qualify as disabilities. What's more, Title IX coordinators must ensure that their schools treat pregnancy and related conditions in the same manner as any other temporary medical conditions. The school might also need to provide reasonable modifications, such as allowing a pregnant student to attend classes remotely or permitting additional restroom breaks.

Districts should be aware that due to ongoing litigation, the 2024 Title IX regulations have yet to take effect in 26 states. This includes the new regulation at 34 CFR Sec. 106.44(b) that requires Title IX coordinators to identify and remove barriers to reporting possible sex discrimination. It also includes the amended regulation at 34 CFR Sec. 106.10 that defines "discrimination on the basis of sex" to include discrimination on the basis of pregnancy and related conditions. OCR has advised districts in these states to follow the 2020 Title IX regulations for the time being. ■

Steps for responding to disability-based bullying complaint

Districts are responsible under Section 504 for responding to peer harassment that they know about or have reason to know about. This chart, based in part on Office for Civil Rights guidance, explains the key steps districts should take when they respond. See *Dear Colleague Letter*, 55 IDELR 174 (OCR 2010).

Step	Explanation
Determine whether discriminatory harassment occurred: When responding to harassment, a district must take immediate and appropriate action to investigate or otherwise determine what occurred. This inquiry should be prompt, thorough, and impartial. Its scope, duration, and methods will vary in each case based on the circumstances.	
1	Define if the conduct is harassing. “Harassing conduct” may include: 1) verbal acts and name-calling; 2) graphic and written statements; or 3) other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. General disruptive or poor behavior, even though it might interfere with the educational opportunities of the class as a whole, typically is not “harassment.”
2	Verify whether conduct is disability-based. Determine if the conduct is motivated by or based on the victim’s disability. This determination requires a case-by-case analysis. It may depend in part on the words the harasser used when engaging in the conduct and whether those words relate to a disability.
3	Recognize if conduct is sufficiently severe, persistent, or pervasive. Conduct does not have to occur multiple times to constitute harassment. But it must be significant enough that it interferes with the student’s education
Take responsive action: If an investigation reveals that discriminatory harassment occurred, a district must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring	
3	End harassment. This might include separating the harasser and victim and taking disciplinary action against the harasser. Districts need to be careful to not put the onus on the victim when making classroom or scheduling changes. Districts should avoid having the two students meet to discuss the situation, as this may cause further harm.
4	Eliminate any hostile environment and its effects. The actions a district takes will vary depending on the circumstances. Such actions might include holding school-wide meetings or classroom discussions to teach kids about the effects of bullying.
5	Prevent harassment from recurring: This might include separating the harasser and victim, providing counseling for either or both individuals, taking disciplinary action, training the school community on how to recognize and respond to harassment, ensuring victims and their families know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents, and responding promptly and appropriately to address continuing or new problems.
Document investigation and outcome: The district must memorialize its response to a disability-based harassment complaint, both to comply with Section 504 and to prepare in case it needs to defend its actions.	
6	Track investigation: Document what occurred, who the district interviewed, and other investigatory steps the district took to determine what happened, whether the conduct was disability-based, and the severity of the conduct and its impact on the victim.
7	Send written notice of investigation’s outcome: Provide parents with written, not verbal, notice of the outcome of the investigation. The notice requirement applies whether the alleged harasser is another student or a staff member. ■

504 lawsuit fails to show district knew boy was abused at charter school

Case name: *K.D. v. Caliber Changemakers Acad.*, 124 LRP 26317 (E.D. Cal. 07/17/24).

Ruling: The U.S. District Court, Eastern District of California granted a district's motion to dismiss a student's Section 504 and ADA Title II claims against it. The court held that the student failed to state a plausible claim that the district overlooked the alleged harassment of the student because of his disability. The court gave the student permission to amend and refile the complaint.

What it means: When a district is a chartering authority for a charter school, it is responsible for ensuring that the school complies with the ADA and Section 504. To reduce exposure to liability, districts should regularly train charter school staff to abide by those laws. Here, a student was allegedly abused at a charter school authorized by the district. The district pointed out he failed to connect it to his disability or to show it knew of the harassment and sexual abuse. Training the school's staff to identify and properly respond to harassment complaints might have helped it avoid the claim.

Summary: A California district won't have to defend itself against allegations that it intentionally ignored alleged harassment at a charter school, at least for the time being. Because a student with a speech impairment didn't explain how the district's purported inaction was based on the student's disability, he didn't establish a viable discrimination claim under Section 504 or the ADA.

To state a disability discrimination claim under the ADA or Section 504, the court explained, a student must show, among other things, that the district discriminated against the student because of his disability. Further, when a student seeks monetary damages, as was the case here, the student must establish that the district intentionally discriminated.

The court observed that the student presented no evidence that the district was aware of the alleged verbal harassment and sexual abuse that was occurring at the charter school.

"Plaintiff fails to allege with particularity how the District's failure to prevent or address his abuse was motivated by discrimination toward his disability," U.S. District Judge Daniel J. Calabretta wrote. Thus, his allegations were insufficient to state a claim for discrimination under the ADA or Section 504, the court held.

The court also pointed out that even if the student had demonstrated that the district's lack of response was due to the student's disability, he failed to show that the district acted intentionally. The court noted

that the student's complaint was replete with claims that the district was negligent in its response to the alleged mistreatment. To show intent, the court stated that the student would have had to allege that the district was not merely negligent but that it knew that abuse was highly likely to occur and failed to act on that likelihood.

The court dismissed the claims with leave to amend. ■

Telepresence robot won't be standing in for 6th-grader with anxiety

Case name: *Doe v. Regional Sch. Unit 21*, 124 LRP 33180 (D. Me. 09/06/24).

Ruling: The U.S. District Court, District of Maine dismissed the parents' request for a preliminary injunction. The court held that they did not plausibly allege that a district discriminated against their sixth-grade child, in violation of ADA Title II and Section 504, by denying their requested accommodations for her anxiety.

What it means: A district discriminates if it denies a request for a reasonable accommodation based on a student's disability. This district wasn't required to accommodate a child's anxiety by allowing her to use a telepresence robot to remotely access instruction. Instead, its educational specialists testified that the better path to provide FAPE was for the child to overcome her anxiety by slowly integrating her into the classroom without the aid of a robot. The district pointed to the parents' failure to show that denying the use of a robot excluded the child from participating in school.

Summary: A Maine district does not have to permit a sixth-grader with a 504 plan to use a "telepresence robot" to remotely access instruction. The parents did not plausibly allege a failure to accommodate the child's anxiety where the district made a case that its plan of action without the robot was the better way to minimize harm.

The child's anxiety prevented regular attendance. The parents requested the use of a telepresence robot to remotely access the classroom and acclimate the child back to in-person instruction. The district denied the request. The parents alleged disability-based discrimination and sought an injunction permitting the use of the robot. To establish discrimination in violation of ADA Title II and Section 504, the parents had to show that the requested accommodation was reasonable and that the denial of that request discriminated against or prevented the child from participating in district services or programs, the court explained.

To obtain the injunction, the parents had to show they were likely to succeed, the child would suffer irreparable

harm, equities weighed in favor of allowing the use of the robot, and it was in the public interest, the court added.

It noted that, as to irreparable harm, a student whose disability limits her attendance to 15 percent of classroom hours may well be excluded from participation and denied the benefits of schooling. But, the court pointed out, the district's educational specialists "plausibly contended that the better path for Jane Doe is to overcome her anxiety by slowly integrating her into the classroom without the aid of a robot."

Next, the parents failed to articulate a cognizable standard for when an action excludes a student with a disability from participation or how the district failed to meet that standard, it concluded. Although they pointed to the use of a telepresence robot by another student in the district as evidence of discrimination, there was no evidence that he suffered from the same disability or that the district was required to extend the child the same benefits, the court noted.

The court declined to grant the requested relief. ■

Safety concerns, requests for 1:1 aide suggest peer assault was preventable

Case name: *Nagel v. Cloverleaf Local Sch. Dist. Bd. of Educ.*, 124 LRP 33218 (N.D. Ohio 09/09/24).

Ruling: An Ohio district will have to defend allegations that it discriminated against a student with autism when it failed to provide a one-to-one aide in his postsecondary transition program. Holding that the parent sufficiently pleaded a failure to accommodate, the U.S. District Court, Northern District of Ohio denied the district's motion for judgment on the parent's Section 504 and ADA Title II claims.

What it means: Neither Section 504 nor the ADA require a district to provide every accommodation that a parent might request for a student with a disability. When the district has evidence that a requested accommodation is necessary, however, it should reconvene the student's IEP or Section 504 team to discuss the matter. Here, email communications between district employees revealed that staff at the student's educational placement had requested a one-to-one aide for safety reasons. That evidence, along with IEP notations about the student's "unpredictable emotional outbursts," raised questions about whether the district took reasonable steps to prevent the student from assaulting others.

Summary: An Ohio district's failure to provide a one-to-one aide for a student with autism despite requests from staffers at his postsecondary transition programs could make it legally responsible for the student's expulsion. Noting that an aide might have prevented the student from physically assaulting a classmate, the District Court denied the district's motion for

judgment on the parent's Section 504 and ADA claims.

U.S. District Judge Charles E. Fleming pointed out that the parent was seeking relief for the district's alleged failure to accommodate the student's autism. As such, the judge observed, the parent needed to show that the requested accommodation was reasonable and that the accommodation the district provided was unreasonable.

Judge Fleming explained that the parent's allegations, if true, could support a finding that the district failed to accommodate the student's disability. The judge noted that the student's IEP referenced his "unpredictable emotional outbursts," his difficulty in orienting to others, and his sensitivity to noise and other environmental stimuli. What's more, the judge observed, emails between district employees and program staff following the student's "meltdown" on a bus suggested the district was aware of the student's need for one-to-one assistance.

The judge noted that the student's history of physically attacking others, coupled with the email communications, suggested that a one-to-one aide might have been a reasonable accommodation. "At this stage, [the parent] has alleged sufficient facts to allow for a reasonable inference that the [district] did not offer a reasonable accommodation to [the student]," the judge wrote.

Judge Fleming dismissed the parent's state law claims against the district on the grounds of statutory immunity. However, the judge allowed the state law

504 quick quiz

Q: Can malfunction with auxiliary aid lead to 504 violation?

A: Yes, it could lead to a violation if no backup is provided, which is why it is a good idea for a district to be ready to provide other auxiliary aids and services to meet a student's needs should technical difficulties arise.

For example, in *El Paso County School District 2, Harrison, 67 IDELR 75* (SEA CO 2015), when the student was unable to use an e-reading application on his tablet, his teacher provided him with large-print materials with auditory support and flashcards so he could complete his work.

The district in *Grandview Heights City (OH) School District, 115 LRP 32681* (OCR 02/25/15), faced disability discrimination allegations when it did not have backup aids on hand. The student could not hear during a class meeting because her roger pen, a wireless microphone connected to her hearing aids, malfunctioned. Although the district provided the student with notes and preferential seating, OCR noted that it should have also offered her Communication Access Real-time Translation services so that she could receive a live transcription of the presentation.

claims to proceed against individual district employees. The judge did not address the merits of any of the parent's claims. ■

Disenrolling student after 'devastating' event enables 504 money damages

Case name: *O.L. v. Cobb County Sch. Dist.*, 124 LRP 35292 (N.D. Ga. 09/30/24).

Ruling: The U.S. District Court, Northern District of Georgia held that a district may have discriminated against a seventh-grader with severe disabilities when it allegedly failed to provide her appropriate services and excluded her from school. It declined to dismiss the parent's Section 504 and ADA Title II claim in which she requested injunctive and monetary relief. The court also ruled that the parent's constitutional claim against the district could proceed.

What it means: A district may not close its doors to a student with a severe disability. If the district doesn't have the resources to meet the student's needs, it should consider other options to ensure she receives an equal educational opportunity under Section 504 and Title II. When this seventh-grader suffered a catastrophic medical reaction to medication, the district allegedly disenrolled her from school, suggesting it was deliberately indifferent. Had it instead considered placing her in an out-of-district program or on home instruction, the student may have received appropriate services and the parent wouldn't have filed a claim for monetary damages.

Summary: Allegations that a Georgia district intentionally disenrolled a middle schooler after she suffered a "devastating medical reaction to prescription medication" bolstered a parent's claim that the district engaged in disability discrimination. A District Court held that the district may have acted deliberately indifferent to the student's needs in violation of Section 504 and Title II.

To assert a viable discrimination claim under Section 504 and Title II, the parent had to show: 1) the student was excluded from participation in or denied the benefits of the district's programs, services, or activities; 2) the exclusion was by reason of the student's disability; and 3) the district acted deliberately indifferent. Although the court did not individually analyze these criteria, it opined that the parent's lawsuit presented a viable claim.

In March 2020, the court noted, the student suffered a devastating medical reaction to prescription medication that incapacitated her mental and physical health. After the incident, the student was unable to feed herself, talk, stay continent, write, or do schoolwork.

Although the parent requested special education, including in-home education, the district allegedly failed to address the student's needs. The district allegedly pressured the student to withdraw from school,

refused to implement the accommodations in her Section 504 plan, and threatened the student with truancy charges, among other things, the court noted. In December 2020, the district allegedly disenrolled the student pursuant to an agreement among the school principal, the supervisor for alternative services, and special education director. The student had not attended school since her disenrollment, the court observed.

These allegations, if true, plausibly indicated that the district intentionally excluded the student from a public education for almost four years solely based on her disability, the court determined. What's more, the allegations suggested that multiple school officials knew that the student was subjected to discrimination and failed to take action to stop it. Because this would amount to deliberate indifference, the court declined to dismiss the parent's discrimination claim at this stage of litigation. ■

Logs, documents disprove discrimination, implementation failure

Case name: *Tate County (MS) Sch. Dist.*, 124 LRP 33592 (OCR 08/22/23).

Ruling: The Office for Civil Rights found insufficient evidence that a Mississippi district discriminated against a student with an IEP in violation of the ADA Title II or Section 504.

What it means: A district may unlawfully discriminate if it fails to implement a student's IEP or 504 plan. This district relied on teacher implementation logs and documentation to the parent to confirm that the services required under a student's IEP were provided.

Summary: A Mississippi district did not discriminate by failing to implement the services required under the IEP of a student with an undisclosed disability. The district provided the student FAPE.

The parent contacted OCR and alleged that the district denied the student FAPE by failing to implement his IEP. She also asserted that a teacher denied the student's request to attend a school program because of his disability and to avoid providing needed accommodations.

ADA Title II and Section 504 prohibit districts from discriminating based on disability, and require that they provide students with disabilities FAPE, OCR explained. One means of providing FAPE is by implementing the student's IEP, it added. In addition, districts may not discriminate by excluding students from participation in school programs, services, or activities because of disability, OCR observed.

Records indicated that IEP meetings were conducted and an IEP was developed by a group of persons knowledgeable about the student, including the parent and the student, OCR observed. Based on data and interviews, OCR found that the district appropriately

evaluated the student, and his needs were determined on an individualized basis.

Teacher logs documented that regular education teachers provided the student with services in his IEP and that services were provided, it noted. The district documented that it informed the parent of the provision of services, OCR added. Further, the parent didn't raise issues with those services, it noted.

OCR found insufficient evidence that the district failed to provide the student required services or denied him FAPE.

Finally, the district proffered a legitimate, nondiscriminatory reason for denying the student's request to attend the school program — he didn't meet program requirements. A review of the requirements suggested prerequisites for student success, OCR noted. After a review of the student's report card, OCR determined there was insufficient evidence of differential treatment or that he was denied enrollment because of his disability. ■

Failure to accommodate blind teen in Excel course hinders access, FAPE

Case name: Wake County (NC) Pub. Sch. Sys., 124 LRP 2471 (OCR 07/13/23).

Ruling: OCR determined that a North Carolina district may have violated Section 504 and Title II when

it allegedly failed to provide a high schooler with blindness appropriate accommodations in an honors course. To remedy the potential violation, the district pledged to effectively implement the student's IEP to ensure he receives FAPE.

What it means: When classroom accommodations are ineffective, a district should troubleshoot the problem as soon as possible. In some cases, the district may need to explore alternative services to ensure the student can participate in school to the same extent as his peers and receive FAPE. When this teen was unable to effectively use the technology required for his Microsoft Excel honors course, the district should have reconvened his IEP team to discuss other accessibility options. This may have enabled the district to timely obtain the Braille transcriptions the student needed to understand all lesson content and testing materials in the course.

Summary: A North Carolina district's efforts to accommodate the needs of a high schooler with blindness in a Microsoft Excel honors course likely fell short under Section 504 and Title II, according to OCR. Noting that the student was unable to effectively access the technology necessary for the course, OCR concluded that the district could resolve the potential violation by executing a resolution agreement.

Under Section 504 and Title II, a district must provide FAPE to all eligible students with disabilities in its jurisdiction. One way to satisfy this requirement is to properly implement an IEP developed under the IDEA. Additionally, the district must ensure that it provides students with disabilities an equal opportunity to participate in and benefit from all its services, programs, and activities. The district may have violated these requirements when it allegedly failed to provide the student appropriate accommodations in a Microsoft Excel honors course as required by his IEP, OCR determined.

The student alleged that the district failed to fully implement his IEP with respect to his Microsoft Excel honors course. Specifically, he contended that there are barriers in the technology used in the course, including issues impacting the delivery of course content, the functionality of the course, and the assessment of his progress. He also argued that the district failed to adequately and timely remove or address these issues through "alternative means of access to the course content."

Before OCR could complete its investigation, the district voluntarily executed a resolution agreement. It pledged to timely provide the student the materials and software he needs to access his courses. It also promised to "undertake specific efforts to ensure equally effective means of alternative means of access" for the Microsoft Excel honors course, such as by transcribing content into Braille from inaccessible simulator software. OCR closed the complaint. ■



LRP's National
INSTITUTE
on Legal Issues of Educating Individuals with Disabilities

FEATURING
Special Ed
Connection
Users
Group

April 27 - 30, 2025
PHOENIX CONVENTION CENTER
PHOENIX, ARIZ.

The leading event for best practices,
compliance strategies and case updates
impacting your special education programs.
The nation's top legal experts come together
to share their insights and guidance on
dealing with the ever-changing landscape
of special education law.

LEARN MORE NOW

Or visit us at www.LRPInstitute.com

Source Code: 25NEWS2