

# Section 504 COMPLIANCE ADVISOR

ROUTE TO	

Your Guide to Understanding and Administering Section 504

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## Good grades don't preclude student's possible need for 504 plan

Picture a student with a disability who has been appropriately exited from special education and has satisfactory academic achievement. The district might be tempted to skip consideration of the student's possible eligibility under Section 504. Or, the 504 team may receive a referral but conduct a hasty determination that barely scratches the surface of the student's needs. The district shouldn't bypass its 504 child find obligation too quickly.

Even when a student's grades and test scores aren't setting off alarm bells, avoid prematurely closing the door on the possibility of a 504 plan. If the district creates a plan, make sure it genuinely addresses any nonacademic needs and that parents understand how the plan will meet those needs. Comply with Section 504 child find requirements, even in the absence of academic performance problems, using these attorney recommendations as your guide.

### Consider nonacademic concerns

Timothy E. Gilsbach, an attorney at Fox Rothschild LLP in Blue Bell, Pa., said a thorough evaluation is critical to making the right call regarding student eligibility under Section 504. This is especially important to remember when a student's grades and test scores may have improved to the point that they're at or above grade level.

"Academic performance is a good thing," Gilsbach said, "but for a student on the [autism] spectrum, there could [still] be social skills issues. For ADHD, there may be executive functioning issues."

If the team thinks an IEP is no longer necessary, Gilsbach said they should do a dual evaluation. They must first determine whether the student remains eligible under the IDEA. If she is not, they must evaluate to reveal whether a 504 plan is a logical next step, he said.

### Ensure evaluation uncovers needs

The 504 evaluation should be broad, Gilsbach said, but also focused on the areas that the IEP identified. Beyond social skills or executive functioning, "sometimes there's language issues [or] sensory issues. Talk to the teachers and get a broad picture of what they are seeing in class," he said. At the middle school or high school level, it is also important to check with different teachers, said Gilsbach. "Make sure that what we're seeing in math class is the same thing we're seeing in science or social studies."

(See **GRADES** on page 3)

## Did school treat Special Olympics athlete differently than other student athletes?

A teen with an undisclosed disability wasn't provided practice time to cycle with his teammates on the track after school in preparation for a Special Olympics track event. Instead, his cycling practices were treated as physical therapy sessions during the school day. They occurred mostly in the gym.

To improve his cardiopulmonary function and endurance, the student's IEP included a goal of cycling around the track without stopping by the end of the school year. However, the teen didn't practice on the track until a month prior to the Special Olympics event.

A complainant contacted OCR. She alleged that the district treated the teen differently by not providing practices after school with his team on the track where his event would take place as compared to nondisabled athletes' practice time. The district explained that Special Olympics athletes practiced at school during physical education.

To establish differential treatment in violation of ADA Title II and Section 504, a complaint must show that the district discriminated by treating the teen less favorably than similarly situated nondisabled students. Then, OCR determines whether the district had a genuine, legitimate, nondiscriminatory reason for the different treatment.

### Did Tenn. district deny teen practice time on track based on disability?

**A. Yes.** The teen was not provided the same practice time as compared to typical, nondisabled athletes practicing after school.

**B. Yes.** Special Olympics student athletes were treated differently and unable to train for the event the same as nondisabled athletes were able to train for other sporting events.

**C. No.** The district treated the teen similarly, as compared to his nondisabled peers engaging in similar types of sports and recreational activities.

How the Office for Civil Rights found: C.

In *Washington County (TN) Public Schools*, 124 LRP 35233 (OCR 12/13/23), OCR found insufficient evidence of different treatment and discrimination based on disability. It determined that there were no facts supporting that students with disabilities participating in Special Olympics were treated differently than students without disabilities participating in similar sports activities with respect to practice.

A is incorrect. Practicing skills for the Special Olympics were included as part of the wellness curriculum of PE. Those skills, including throwing a ball, walking or running on the track, and jumping, were taught during the school day, and the teen was provided practice time during PE.

B is incorrect. The school explained that its track/field and athletic facilities stay locked up during non-school hours, and other student groups were permitted to use the track or facilities when not being used by athletes or the marching band.

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

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**GRADES** (continued from page 1)

If the reports don't paint a consistent picture, the evaluation team needs to figure out why, Gilsbach said. It could be the subject matter, the class size, the time of day, or the personality of the teacher. Most of those factors can be addressed, he explained.

**Help parents understand 504 purpose, protections**

If parents are upset by the possibility of a move from an IEP to a 504 plan, Gilsbach suggests providing a thorough explanation to them. "A 504 [plan] is a legally binding document, just as much as an IEP," he said. "It can be as robust or as minimal as the student's needs require."

A district that fails to implement a 504 plan can get in just as much legal trouble as one that fails to implement an IEP, Gilsbach added. And if a district views the 504 plan as "optional" or "lesser than" an IEP, this also poses legal dangers. "If they say they're going to [implement] it, they've got to do it," he said.

A 504 plan can actually be more inclusive than an IEP, Gilsbach said, because it can cover any disabling condition, not just the categories listed under the IDEA. Examples of conditions that may lead to a 504 plan include a sleep disorder, food allergy, or asthma.

Parents should understand that accommodations help "level the playing field," Gilsbach said. "For example, a student who has ADHD or focus issues might get the same test as everybody else, but for that student, we put each question on its own page because that helps them focus. It's something we can do to help the student access their education in the same way that their peers can."

Some 504 accommodations may be phased out over the course of the student's growth and development, said Gilsbach. An elementary school student on the autism spectrum may develop age-appropriate social skills with the help of the school and his own maturation. "The student's needs may change, and that may mean the accommodations change," Gilsbach said. ■

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## **Escape discrimination dangers: Academic inclusion of students with 504 plans**

General education teachers play a vital role in creating an inclusive learning environment for all students, including those with Section 504 plans. However, even with the best intentions, educators may sometimes inadvertently inhibit the academic participation of students with disabilities.

Section 504 requires that students with disabilities have access to education equal to that of nondisabled students. 34 CFR 104.4. This involves meeting their individual educational needs as adequately as the needs of nondisabled students are met. 34 CFR 104.33(b).

Educators must safely navigate around discrimination dangers to ensure students with 504 plans are fully engaged and supported in the gen ed classroom. Protect your district from legal pitfalls through effective instruction, appropriate accommodations, and collaboration between general education and special education teachers. A director shares insights on how teachers can avoid unintentional exclusion of students with 504 plans.

**Integrate accommodations into instruction**

To prevent unintentional exclusion in the classroom, begin by making sure teachers understand the purpose of 504 plans, said Ramona Lee, special education director for West Ada School District in Meridian, Idaho. For eligible students with disabilities under Section 504, plans include accommodations students need to access their education fully. Lee said these can range

from extra time on tests to assistive technology to modified assignments, depending on the student's needs.

"One thing teachers often do is incorporate specific accommodations and supports into their day-to-day instruction," Lee said. Many accommodations align with the Universal Design for Learning framework, which benefits students with disabilities as well as nondisabled students. For example, Lee said providing all students with extra time to complete tests, read-aloud test questions, or assistive technology like screen readers helps avoid singling out students with 504 plans.

Beyond the traditional academic subjects, districts should also remember to ensure accessibility of career and technical education programs for students with 504 plans, said Lee. This involves providing supports and accommodations that allow students with disabilities to explore interests and develop vocational skills to prepare for their postsecondary transition.

**Foster partnership between general, special ed**

Effective collaboration among general education teachers, special education staff, and parents is crucial for preventing exclusionary practices, said Lee. She also emphasized the importance of regular communication. "Our district has weekly collaboration time built in every Wednesday morning ... we expect that teams are talking about the needs of students and working together."

This approach ensures that everyone is aware of students' needs and accommodations and can work together to implement them effectively, Lee said. Ultimately, she said the school community must shift the focus from limitations to possibilities while embracing the unique contributions of every student.

"We would never say, 'You can't do that because of

a disability or limitation,'" Lee explained. "We think about what [students with 504 plans] need in order to have equal access opportunities like every other student." She said this student-centered approach, along with a commitment to providing necessary accommodations, fosters an inclusive environment where all students can thrive. ■

## Brush up on related services for students with orthopedic impairments

Students with orthopedic impairments such as muscular dystrophy and spina bifida often require related services beyond academic instruction. These may include physical therapy, occupational therapy, speech-language therapy, and assistive technology that play a crucial role in supporting their academic success, physical well-being, and overall development.

Related services help students with orthopedic impairments access their education, said Jennifer Keicher, special education director for the Los Altos (Calif.) School District.

The IDEA mandates that schools provide students with disabilities related services when needed to provide FAPE. 34 CFR 300.34(a). Putting supports in place

for students with orthopedic impairments helps districts preserve their educational access. Below, Keicher offers advice on implementing and monitoring related services such as physical therapy and assistive technology for this student population.

### ☑ Implement appropriately

Keicher explained that the role of physical therapy is to "help [students] access their educational environment physically and academically." This includes assessing and addressing motor skills, strength, and mobility to ensure students can navigate the school building, participate in physical education, and move between classrooms with ease.



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Assistive technology can also play a vital role in supporting students with orthopedic impairments, helping them overcome barriers to learning and access information more effectively, said Keicher. She highlighted the technology's versatility, saying the choice of tool "depends on the age, the need, and the progress a student is making." Keicher noted AT's diverse applications, explaining that while students frequently use speech-to-text aids, there are also text-to-speech aids that can make PDFs and other formats more accessible.

For students whose orthopedic impairment limits speaking ability, augmentative and alternative communication devices can enhance communication, Keicher said. By carefully selecting and implementing appropriate AAC technology, educators can empower students with orthopedic impairments to express their ideas and achieve greater independence.

No matter the specific related service, Keicher said effective collaboration among therapists, teachers, families, and other stakeholders is essential

for successful implementation. Open and frequent communication ensures that everyone is working together to support the student's needs.

Keicher also emphasized the importance of "tight communication" between the educational and medical teams, with parents playing a central role in facilitating information sharing. This approach ensures that everyone involved in the student's education is aware of her progress and any changes in her condition, said Keicher. Strong collaboration also enables the team to make timely adjustments to related services as needed.

#### ☒ **Monitor effectiveness**

Regular assessment and reevaluation are crucial for determining the effectiveness of related services, Keicher said. "Assessment drives our areas of need, which then drive our goals, which drive our services." She said this data-driven strategy ensures that related services are aligned with the student's individual goals and can be adjusted as needs change. ■

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## Acknowledge that residential placements are option under Section 504

Section 504 states that if a public or private residential placement is necessary to provide FAPE to a student with a disability, the placement — including non-medical care and room and board — must be provided at no cost to the student and her parents or guardians. 34 CFR 104.33 (c)(3).

While rare, residential placements for students with 504 plans should be acknowledged as possible by 504 teams. Considering them for students with 504 plans may ward off future disputes about a student's programming and placement.

"I honestly have never had a 504 student who required a residential placement," said Marcy Gutierrez, an attorney at Heyer Gutierrez LLP in Sacramento, Calif. "But I have seen cases where the court ordered a school district to provide a family with reimbursement for the costs of a residential placement if there was a violation of Section 504."

Section 504 teams should be mindful of the possibility that a student could require a residential placement. Remain alert to student needs and let appropriate evaluation guide your decision-making. Take the following steps when considering a residential placement for a student with a 504 plan.

✓ **Uncover signs.** A student with a 504 plan who may require a residential placement may display se-

vere social-emotional and mental health needs, Gutierrez said. The student may have:

- Missed a lot of classes and school.
- Exhibited sudden changes in behavior, including increased signs of depression, anxiety, or other mental health issues.
- Been hospitalized.
- Expressed suicidal ideation.
- Frequently visited the nurse's office.
- Been receiving private therapy.

✓ **Conduct evaluation.** These signs may also point to the need for an evaluation under the IDEA to see if the student qualifies under emotional disturbance or other health impairment, Gutierrez said. If the student's issues are severe, it may make sense to conduct one to rule out the need for special education and related services. "If the student doesn't meet the eligibility criteria under the IDEA, then go back to the 504 process," she said. "The student didn't meet eligibility under the IDEA, but they do have a disability that substantially limits one or more major life activities. How do we best meet their needs?" In *J.D. v. Pawlet School District*, 33 IDELR 34 (2d Cir. 2000), a district offered counseling and training in peer relationships. That was enough for FAPE under 504. A residential place-



ment was not necessary.

Just don't take too long to decide whether to conduct an evaluation, Gutierrez said. If you are torn over whether to conduct a 504 or IDEA evaluation and delay doing either, you could put your district at risk of violating child find and denying the student FAPE. In *Laurén G. v. West Chester Area School District*, 60 IDELR 4 (E.D. Pa. 2012), for example, a district had to reimburse parents for the therapeutic residential placement of a student with OCD and depression after it improperly found her ineligible for a 504 plan.

"The school district had ample knowledge that there was a reason to suspect a disability that necessitated an evaluation under Section 504," Gutierrez said. If a district would just conduct an assessment as soon as these signs emerge, it may not be ordered

to pay for a residential placement later. "I'm seeing [that] whenever a residential placement is being ordered under 504, it's when a district [has done] something wrong," she said.

✓ **Determine supports, services.** Besides the counseling and training on peer relationships mentioned in the *J.D.* case, teams may want to offer more accommodations and services aside from considering residential placement, Gutierrez said. These may include academic accommodations and check-ins with a trusted adult. See *In re: Student with a Disability*, 110 LRP 15156 (SEA MA 04/28/09) (noting that while a residential placement was beneficial to an 18-year-old with PTSD, the district offered FAPE under Section 504 when it proposed to place her at a regular education public high school). ■

## These 3 practices help tame ballooning Section 504 caseloads

As teacher shortages persist, it can be challenging for Section 504 coordinators and special education staff to serve the large number of students needing accommodations and monitoring.

"It's important to understand that we're all in the same boat," said Jennifer Stratton, student services director of Shenandoah (Va.) County Public Schools. "Everywhere is dealing with [teacher] shortages, but we can't use that as an excuse... we're here to do what's best for the students and make sure those needs are met."

Don't leave your district vulnerable to 504 complaints. Despite staff shortages, remain legally compliant by ensuring that students receive appropriate services. Below, discover ways to think outside of the box when handling a heavy 504 caseload.

### 1. Prioritize, organize

"It requires strategic planning [and] prioritization to ensure that we are in compliance with federal mandates and the needs of students," Stratton said. Highlight deadlines for initial evaluations and annual reviews using a master calendar. Stratton also suggested sending the master calendar to case managers and assistant principals. In her district, these staff notify the student services director of students who may need initial evaluations so the director can review information before sending it to the 504 specialists.

In addition, prioritize students with a higher need for 504 services by placing these students with educators who are familiar with 504 services and understand how to deliver accommodations, Stratton said.

### 2. Delegate tasks

"Since we are so short-staffed, delegating tasks is a little difficult," said Stratton. Each school should have a spreadsheet updated with annual reviews and initial evaluations before the start of the new school year. "Then those are delegated by the school," she said.

For instance, Stratton said the 504 specialist checks the spreadsheet for reviews or evaluations in October, then notifies the assistant principal of these in mid-August to allow ample preparation time. "Just keeping that documentation up to date and maintaining these records is most important," she said.

### 3. Lean on other staff

"We meet monthly, and we have training for administrators," said Stratton. Specifically, principals have training on one day, and assistant principals have training on the next day, taking part in more scenario-based workshops. "I am able to have time during those meetings to discuss any of the new mandates, what their concerns are, and if they are having a difficult time getting timelines met," she said.

"I think cross-training staff is very important," Stratton added. School counselors should understand "what to do, how to handle those meetings, how to schedule those meetings, and what actually is involved in the determination and understanding [of 504 plans]." This is important in cases of temporary assignment, where a counselor or teacher is given a spreadsheet and is responsible for a group of ninth-graders, said Stratton.

Paraprofessionals and support staff also play a large role in covering for classes when the main teacher is pulled out for a meeting, Stratton said. While each

staff member may not be an expert in the 504 process, she said, it's important that staff lean on each other for support.

Stratton recommended designating a mentor for

new staff who can answer questions such as "What would this accommodation look like?" and "Can you model this for me?" Collaboration is key in times of staff shortages, she emphasized. ■

## **Parent asking for accommodation of extended time? React this way**

Parents of a student with a disability just flagged you down to let you know their child needs extended time for tests and assignments. Must you automatically grant the request?

"When a parent requests something, we always try to meet within 10 school days," said Whitney Kovach, district Section 504 specialist for Williamson County (Tenn.) Schools. Teams must discuss the option of extended time, but they may have good reason to leave it out of a student's plan.

Although extended time might seem like a go-to accommodation for ensuring students with disabilities receive FAPE, don't slap anything cookie-cutter into the 504 plan. Implementing this support haphazardly can actually impede student access to the curriculum. Follow the approaches below to make appropriate decisions and craft customized accommodations that are legally compliant under Section 504.

### **Let data drive decision**

If a parent brings in a request for extended time, "[504 teams] come together, and we try to use all data to drive our accommodations," Kovach said. Teams try to gather data from parent input, teacher input, tests, and outside specialists who serve students with mental health conditions.

Kovach said her district's 504 teams gather data that show whether students are currently running out of time on classroom tests. Additionally, they look at their statewide exam to see how long students take on each subpart. Teams also consider students' specific disabilities and data associated with their conditions, Kovach said. These factors help fine-tune a decision regarding the accommodation of extended time.

Teacher input is another valuable way to collect data, said Kovach. Teams ask teachers at the middle- and high-school levels to fill out questionnaires. She said sample questions might read: "Does this student need this [accommodation] based on their disability? Are they completing their work [in time]?"

### **Ensure accommodation is appropriately specified**

"When we write our extended time [accommodations], we are very specific," Kovach said. Students can qualify for extended time on assignments, class projects, class tests, and most district assessments except

the universal screener and ACT and SAT, she explained. Kovach reminds 504 coordinators to specify the context in which the extended time accommodation will be used, answering the "how, when, where, and why."

"It's never left as [simply] 'extended time;' it always has [a] time limit on it," said Kovach. Teams always add a multiplier to the accommodation based on the type of assignment or test. "For our state test, we have certain multipliers, so [students] can get 1.25, 1.5, or double time," she said.

### **Implement extended time properly**

Implementation of the extended time accommodation can look a little different depending on grade level, said Kovach. Elementary students are self-contained, she said, so the teacher can pull students to the back of the class to provide them with extra time.

Kovach added that some schools, through multi-tiered systems of support, build in time for students to make things up if they aren't receiving peer intervention. She said middle and high schools have advisory times built into the school day when students can receive extended time. Some high schools also have testing centers where students can receive support during their study hall, Kovach said.

To ensure fidelity of implementation, Kovach's 504 coordinators get teachers to sign off on each plan to show they received, reviewed, and understood it.

### **Help parents understand**

Some parents may not understand why their child doesn't automatically qualify for extended time when they've requested the accommodation, Kovach said. "We just tell them that ... the data doesn't show that your child has this need."

"We also talk about how extended time negatively impacts a child if they don't need it," said Kovach. For example, extra time for students with anxiety or OCD might offer too much leeway for them to second-guess and change all their answers, she said.

Students with ADHD can also suffer the effects of inappropriate extended time if they use it to procrastinate, Kovach said. It's important to "look at the root cause instead of just throwing a bunch of accommodations in a plan," she said. ■

## When eating disorder sounds alarm for 504 eligibility, heed these warnings

Educators thinking of student conditions that trigger Section 504 eligibility may not immediately consider eating disorders. Perhaps it's because teachers might not consider this condition a disability.

"To meet [eligibility criteria for] a disability under Section 504, you have to have a physical or mental impairment that substantially limits one or more major life activities," said Deanna Rogers, Atlanta (Ga.) Public Schools' district 504 coordinator. She explained that an eating disorder may qualify, depending on how it impacts the student.

Treat signs of a student's eating disorder as a blaring siren indicating a possible need for a 504 evaluation. Properly trained teams can avert child find failures and appropriately support students who struggle with these conditions. Grab your notepad and jot down some tips that can help preserve FAPE for students with eating disorders.



### **Warning 1: Pay attention to signs**

Rogers said that in her school district, teachers are trained to understand the basics of Section 504 and child find to determine when to refer a student for a 504 evaluation at the beginning of the school year.

If a student isn't eating at lunch or repeatedly goes to the restroom immediately after eating, it may indicate an eating disorder that should be investigated, Rogers said. She said teachers should also look for patterns of a student refusing to eat a snack that was given to everyone in the classroom. Educators should also note when a student with a suspected eating disorder frequently visits the nurse's office.

Rogers said in her district, most referrals are actually made by parents rather than school staff. Parents tend to email or call the 504 coordinator to request a 504 plan for their child, she said. Rogers' district sends an optional medical form to parents in hopes that they will gather data to help establish an impairment. "We can't just go off an opinion," she said. About 95 percent of parents tend to bring in a medical or psychological report, which Rogers said makes the eligibility determination meeting a bit easier.



### **Warning 2: Be careful to obtain consent**

After a 504 team receives information from parents or teachers, it must send a consent for evaluation form to parents, said Rogers. "We can't start collecting information until we have consent," she explained. Then, the team sends parents notice of their right to procedural safeguards.



### **Warning 3: Make thorough determination**

The 504 evaluation team should consist of personnel knowledgeable about the student and eating disorders, Rogers said. She recommended that the meeting follow a protocol based on Office for Civil Rights guidance.

The team must first determine the type of disability, whether it's transitory or minor, and whether there is a record of the impairment, said Rogers. Along with input from medical providers, the team will also review data, including the student's grades, standardized test results, behavior, and attendance.

Rogers said these data will help answer the questions: "Is there a physical or mental impairment?" and "Does it substantially limit one or more major life activities?" For example, she said a student with an eating disorder might vomit constantly, creating physical challenges that leave her unable to concentrate in class. In this case, the condition interferes with learning, as well as the bodily function of digestion, both of which are considered major life activities.

If an identified impairment does, in fact, impede a major life activity, the 504 team then assesses the impairment's impact on the student's education, said Rogers. A student with an eating disorder that is determined to impact his access to education may receive a 504 plan with one or more accommodations, she said. For example, an accommodation might involve access to a comfortable, private area for eating.

Even if no accommodations are deemed necessary, Rogers said, Section 504 would still protect the student from discrimination that interferes with access to education. For instance, a student with an eating disorder couldn't be excluded from a field trip because of fears she might get sick during the experience. ■



## 3 types of students technically eligible under Section 504

Under Section 504, a student may have a qualifying disability and be technically eligible, but not need a 504 plan. Students who merely have a record of an impairment are protected only by Section 504's general nondiscrimination provisions. *See Dear Colleague Letter*, 58 IDELR 79 (OCR 2012).

A student whose impairment is in remission and who receives no services because his impairment does not create a current need for services.

A student whose needs are met through mitigating measures that she controls. Services from her school are not required to meet her needs.

A student for whom parents have refused Section 504 services.



**Example:** A student with ADHD who doesn't need a plan "is still a person with a disability ... and so is protected by Section 504's general nondiscrimination prohibitions," including protection from retaliation, harassment, and unlawful different treatment. *Dear Colleague Letter*, 68 IDELR 52 (OCR 2016). ■

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## Training, comp ed address alleged disregard of Mom's eval. requests

**Case name:** *Wayne County (MS) Sch. Dist., 124 LRP 5414 (OCR 09/05/23).*

**Ruling:** A Mississippi district resolved allegations that an elementary school discriminated against a kindergartner by failing to respond to a mother's requests for a Section 504 evaluation. Under the agreement, the district committed to convening a 504 team to determine the student's need for compensatory education. It also pledged to conduct 504 training for relevant school and district staff.

**What it means:** A district doesn't have to conduct a 504 evaluation merely because a parent requests one. But it must consider whether there is a need to evaluate and provide the parent written notice of its decision. The school in this case allegedly didn't respond to the parent's multiple requests for an evaluation. The school may have decided that it didn't suspect the student had a disability for which she needed special education or related aids and services. If that was the case, the school could have avoided the dispute by explaining its determination in a written notice to the parent.

**Summary:** A district agreed to consider providing compensatory education and promised to train school staff following claims that an elementary school overlooked a mother's repeated requests to evaluate her kindergartner. OCR stated that once the district completed all the steps in a voluntary resolution agreement, it would close the mother's Section 504 and Title II claims.

Under Section 504, districts must evaluate students suspected of having a disability and needing special education or related aids or services. When a parent requests a 504 evaluation, the district must promptly respond by initiating an evaluation or denying the request and sending prior written notice.

OCR noted that, according to the parent, beginning with the 2022-23 school year, she asked the school to evaluate her daughter, but it did not do so. Before OCR finished investigating, the district signed a voluntary resolution agreement.

Among other things, OCR noted, the district must ensure that the school convenes a 504 team to determine whether the student requires compensatory education and, if so, develop a plan to provide it. OCR stated that the district also must provide it documentation of the team's decision, including: an explanation of the basis of the team's decisions; a list of participants; records of information considered; meeting minutes; and a description of the schedule for compensatory education (if any). Finally, the agreement, OCR observed, obligates the district to train school staff, as well as rel-

evant district-level administrators, concerning Section 504's evaluation and placement procedures. ■

## Lack of certification doesn't validate exclusion of resident's service dog

**Case name:** *Schertz-Cibolo-Universal City (TX) Indep. Sch. Dist., 124 LRP 7754 (OCR 10/04/23).*

**Ruling:** According to OCR, a Texas district may have violated Section 504 and Title II when it denied a resident with a disability the opportunity to bring a service animal to school. To remedy the compliance concern, the district executed a resolution agreement in which it agreed to conduct staff training.

**What it means:** Like students with disabilities, parents and visitors with disabilities have a right under federal laws to be accompanied by a service animal while at school. This means that a district can't require a parent or visitor to provide proof of her service animal's qualifications as a condition for access. Here, an administrator improperly barred a resident's service dog from campus after repeatedly requesting documentation of the dog's certifications. Had the school official instead permitted the service dog to enter the school with the resident in accordance with the district's policy, the district may have avoided claims of disability discrimination.

**Summary:** A Texas district's focus on obtaining the certifications of a resident's service animal caused OCR to investigate it for a Section 504 and Title II violation.

Although the resident was ultimately able to enter campus with her service animal, OCR concluded that the district needed to conduct staff training to avoid potential compliance concerns in the future.

Under Section 504 and Title II, a district must modify its policies, practices, and procedures to permit

### 504 quick quiz

**Q:** Can district cut student with disability from sports team for violating team policies?

ability, and no discrimination occurred. team wasn't motivated "solely by reason of" his disability, and no discrimination occurred. district's decision to suspend him from the basketball team was not motivated solely by reason of his disability. The court determined that the student's behavior and attitude over time warranted the consequences imposed on him. "The teen's history of aggressive and disrespectful behaviors showed that the district's decision to suspend him from the basketball team was not motivated solely by reason of his disability." For example, in *Cody v. Kenton County Public Schools*, 82 IDELR 182 (E.D. Ky. 2023), the U.S. District Court, Eastern District of Kentucky found no evidence that a district discriminated against a high schooler with a cognitive deficit and ADHD on the basis of disability when it allegedly suspended him from the basketball team. Rather, the court determined that the student's behavior and attitude over time warranted the consequences imposed on him. "The teen's history of aggressive and disrespectful behaviors showed that the district's decision to suspend him from the basketball team was not motivated solely by reason of his disability." For example, in *Cody v. Kenton County Public Schools*, 82 IDELR 182 (E.D. Ky. 2023), the U.S. District Court, Eastern District of Kentucky found no evidence that a district discriminated against a high schooler with a cognitive deficit and ADHD on the basis of disability when it allegedly suspended him from the basketball team. Rather, the court determined that the student's behavior and attitude over time warranted the consequences imposed on him. "The teen's history of aggressive and disrespectful behaviors showed that the district's decision to suspend him from the basketball team was not motivated solely by reason of his disability."

**A:** Yes, as long as the decision is really about the violations, and not about disability discrimination.

the use of a service animal by an individual with a disability. Moreover, in determining whether an animal qualifies as a service animal, the district may only ask: 1) whether the animal is required because of a disability; and 2) what work or task the animal has been trained to perform. The district may have violated these federal requirements, OCR determined.

It noted that the resident, who had multiple medical diagnoses, was able to initially enter a district school with her service animal. Subsequently, a school-level official allegedly contacted the resident and informed her that her service dog was no longer permitted on campus until the district conducted an internal review of its policies. The school official also allegedly requested documentation regarding the service dog's certification multiple times.

During its internal review, the district determined that it improperly excluded the service dog and contacted the resident to inform her that she could enter school grounds with her service dog in the future.

Before OCR was able to make a compliance determination, the district voluntarily resolved the resident's complaint through a resolution agreement. It pledged to train all relevant staff, including school administrators, faculty, and staff, regarding its duty to permit service animals on campus. Additionally, the district provided OCR assurances that the staff training would cover the district's service animal policy. OCR closed the complaint. ■

## Charter school to study up on best practices for tracking accommodations

**Case name:** *In re: Student with a Disability (OH)*, 124 LRP 9163 (OCR 12/08/23).

**Ruling:** OCR identified concerns, in a highly redacted Letter of Findings, that an Ohio charter school may have discriminated by failing to implement the Section 504 accommodations of a student with an undisclosed disability. The school signed a voluntary resolution agreement, pledging to determine the student's need for compensatory education. It also agreed to obtain staff training concerning providing students FAPE, fully implementing their IEPs and 504 plans, and tracking the provision of accommodations.

**What it means:** Schools engage in discrimination if they fail to fully implement a student's accommodations as required by a 504 plan or IEP. To avoid implementation failures, schools should develop tracking forms that include, for each accommodation, the dates and times the accommodation was provided and who provided it. Disseminating such forms to staff and training them to consistently complete the forms might have enabled this charter school to show that it consistently provided all the student's accommodations.

**Summary:** An Ohio charter school agreed to obtain training for its staff to help them learn best practices for documenting and tracking the provision of accommodations to students with disabilities. Responding to OCR's concerns that it failed to implement the accommodations of a student with an unidentified disability, the school committed to taking the steps outlined in a resolution agreement.

The student's mother alleged that the school violated Section 504 and Title II of the ADA by failing to fully implement the student's accommodations.

In a significantly redacted Letter of Findings, OCR noted that Section 504 requires districts to provide FAPE to students with disabilities through implementing of an IEP or 504 plan.

OCR pointed out that the school provided some tracking documentation. The logs it provided, however, lacked sufficient information to show that staff consistently implemented the accommodations, OCR noted. Further, OCR remarked, the student's teacher stated that the teacher couldn't recall whether the accommodations were provided.

Based on that information, OCR stated, it was concerned that the school may have failed to implement the 504 plan as written and that the failure may have denied the student FAPE.

By signing a voluntary resolution agreement, the school pledged to determine the student's need for compensatory education. It also committed to obtaining staff development for its dean and all other staff responsible for implementing the requirements of Section 504 and the ADA. The agreement requires the training to cover the importance of implementing IEPs and 504 plans, and best practices for properly tracking the provision of accommodations. ■

## Teacher's alleged comment to child sparks IEP implementation claim

**Case name:** *Gilpin County (CO) Sch. Dist. RE-1*, 124 LRP 22490 (OCR 01/31/23).

**Ruling:** There was insufficient evidence that a Colorado district failed to implement the IEP of a transfer student with an undisclosed disability in violation of Section 504 and Title II of the ADA. In a highly redacted Letter of Findings, OCR stated that it was closing the parent's discrimination complaint. OCR also dismissed allegations that the district failed to implement the IEP from the student's prior district and to timely evaluate her. Those claims were untimely, as the parent failed to make the allegations within 180 days, OCR stated.

**What it means:** Districts are required to implement a student's IEP or 504 plan as written. When teachers make negative comments about a student while try-

ing to implement the student's plan, that's not in itself an implementation failure. As this district learned, however, negative comments can lead to implementation complaints and investigations. Here, the teacher should have refrained from allegedly commenting that the student "doesn't feel she needs to bring supplies to class" before changing the student's routine. A neutral comment, or no comment, might have prevented the parent from taking issue with the teacher's attitude and filing a disability discrimination claim.

**Summary:** While a mother might not have liked a teacher's comments on the day her daughter forgot her school supplies, the undisclosed change the teacher made to the student's routine wasn't discrimination. OCR found insufficient evidence that the district failed to implement the student's IEP.

Section 504 and Title II of the IDEA prohibit districts from discriminating against students with disabilities, such as by failing to implement their IEPs as written.

Here, OCR stated, the parent pointed out that the teacher made what the parent considered to be an inappropriate comment about her daughter failing to bring her school supplies to class. The comment allegedly included the phrase "Since [the student] doesn't feel she needs to bring supplies to class, she will ..."

According to OCR in a highly redacted Letter of Findings, the teacher then made an unidentified change to the student's schedule or setting. The educators familiar with the incident, OCR observed, stated that the change was only for one day and only because the child lacked school supplies.

"During this interview, you stated that you did not know whether this violated the IEP or not but that you took issue with the teacher's statement during the incident because you believe she made it sound like the [ ] for the Student that day was a punishment," OCR wrote to the parent.

Rejecting the parent's claim that the district failed to implement the IEP, OCR closed the complaint. ■

## 8th-grader's bee allergy requires only seasonal door-to-door transportation

**Case name:** *Foster-Glocester Reg'l Sch. Dist.*, 124 LRP 36941 (SEA RI 08/27/24).

**Ruling:** An impartial hearing officer found that a Rhode Island district's Section 504 plan transportation accommodations for an eight-grader with asthma and a bee allergy were sufficient under ADA Title II and Section 504. She denied the parents' claim for daily, door-to-door transportation via a regular school bus.

**What it means:** A student's 504 plan must include reasonable accommodations that meet her identified disability-related needs and allow her to access educa-

tion so as not to discriminate. Here, the district showed that it consulted with physicians and determined that the teen's bee allergy substantially limited her ability to safely walk 0.8 miles to the bus stop only during warmer months when bees were active. It established that it appropriately evaluated the teen's transportation needs and provided a "suitable" accommodation of door-to-door minibus transportation during warmer months.

**Summary:** A Rhode Island district provided an eighth-grader "suitable" 504 transportation accommodations given her bee allergy. The parents' claim for year-round, daily, door-to-door transportation via a regular school bus was dismissed.

The parents submitted a doctor's note opining that the teen should not walk 0.8 miles to and from the bus stop due to her asthma and bee allergy.

The district evaluated the teen and found her eligible for a 504 plan based on her bee allergy but not her asthma. It drafted a 504 plan that provided for seasonal door-to-door transportation via a minibus with a medically trained aide during warmer months.

Noting that the teen was late to school and being dismissed early to board the minibus, the parents alleged that the 504 plan was deficient. They sought daily door-to-door transportation via a regular school bus during the entire school year.

ADA Title II and Section 504 prohibit districts from discriminating against students with disabilities, the IHO explained. To be eligible for Section 504 protections, a student must have "a physical or mental impairment that substantially limits a major life activity." Once a student is identified as 504-eligible, the district must offer FAPE by providing regular or special education services designed to meet the student's educational needs as adequately as the needs of nondisabled students are met.

Here, the district properly evaluated the teen and, after consulting with physicians, ultimately determined that only her bee allergy substantially limited a major life activity, the IHO concluded.

The 504 team found that bees are most prevalent during warmer months in Rhode Island. This justified a transportation accommodation to ensure the teen's safety and access to FAPE during the limited time when her individual needs set her apart from her classmates, she noted. Her risk of anaphylactic shock substantially limited her ability to safely walk to the bus stop during those months, the IHO explained. And, the district implemented reasonable, "suitable" transportation accommodations. Medical documentation didn't sufficiently link the need for daily door-to-door transportation to the teen's diagnoses, and the parents weren't entitled to their preferred method of transportation, the IHO added. ■