Section
504 COMPLIANCE ADVISOR

ROUTE TO

Your Guide to Understanding and Administering Section 504

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IN THIS ISSUE

Demystify MDR obligations to student with Section 504 plan who may need IEP

Imagine that a student with a Section 504 plan who is suspected of needing special education violates the student code of conduct. Would the district perform a 504 and an IDEA manifestation determination review? Whom would you include on the MDR team?

An MDR is an evaluation of a child's misconduct to determine whether that conduct is a manifestation of the child's disability. It must be performed when a district proposes disciplinary measures that will result in a change of placement for a child with a disability. 34 CFR 300.530(e).

A student may be entitled to an MDR even if he, at the time of the misconduct, had not yet been found eligible. The obligation applies if the district is deemed to have known the child was a student with a disability before the behavioral incident occurred. 34 CFR 300.534. So if the student is suspected of having a disability under the IDEA, it would make sense just to conduct the one MDR.

"You don't want to overcomplicate things," said Christopher Schulz, an attorney at Schulman, Lopez, Hoffer & Adelstein LLP in Austin, Texas.

There's no need to double up on MDRs for a 504 student who may also need special education. Hold a dual-purpose MDR and focus on convening a team of people who are knowledgeable about the student and able to analyze existing information. Schulz shares below how to handle the MDR of a student with a 504 plan who is suspected of needing special education and related services under the IDEA.

❑ **Conduct one MDR.** If the student is being evaluated for special education eligibility, then conduct just one IDEA MDR, Schulz said. "I don't think you could ever [have two MDRs]. There would end up being two different decisions, right? That would just be a disaster."

❑ **Convene team with mixture of knowledge.** The student will not yet have a special education teacher with direct knowledge of her, so the MDR team will just have to include a special educator who can lend his overall expertise, Schulz said. "It's not a perfect scenario," he said. Include others knowledgable about the student and the meaning of any existing evaluation data, Schulz said. These people may be on the student's 504 team. "In any MDR for a fully eligible IDEA student, you're going to look at all the information in the child's file," he said. "In this type of in-between scenario, you'll still look at all the information in the child's file."

(See **OBLIGATIONS** on page 3)

Do special ed director's terse communications with dad after OCR complaint constitute 504 retaliation?

An Oregon district held a "safety/behavioral planning meeting" for a student with an undisclosed disability who received services under an IEP. The father subsequently met with the special education director to express concerns about the presence of a specific individual at the meeting and an evaluation conducted by the district. The father also informed the director that he had filed a complaint with OCR.

The father alleged that when he mentioned the OCR complaint, the director immediately told him that she could no longer help him and ended the conversation. The director disputed the father's account of the interaction. She claimed she told the father "to do what he felt was right." The director also contended that she listened to and addressed each of the father's concerns.

After the meeting, the director allegedly continued to communicate with the father about the student via phone calls and in-person meetings. According to the record, the director had at least two subsequent phone calls with the father and both lasted five to nine minutes each.

The father filed another complaint with OCR, alleging that the district retaliated against him. To establish unlawful retaliation under Section 504 and Title II, the father had to show: 1) he engaged in a protected activity; 2) the district acted adversely against him; and 3) there was a causal connection between the protected activity and the adverse action. 34 CFR 104.61; and 28 CFR 35.134.

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

A. No. The district improperly cut all communication with the father.

B. Yes. The district did not act adversely against the father.

C. No. The father did not engage in a protected activity.

How the Office for Civil Rights found: B.

In *Nyssa (OR) School District*, 124 LRP 30431 (OCR 02/23/23), OCR concluded that an Oregon district did not retaliate against the father of a student with a disability. After the safety/behavioral planning meeting, the father reported several concerns to the special education director and told her he had filed an OCR complaint. Although the father alleged that the director immediately ended communications with him, OCR disagreed. Records showed that the director continued to communicate with the father to address his concerns about the student's services and answer his questions. Finding no evidence that the district acted adversely against the father, OCR closed the complaint.

A is incorrect. After the father informed the special education director about his OCR complaint, she continued to communicate with him to address his concerns.

C is incorrect. The father engaged in a protected activity when he advocated on behalf of the student during the safety/behavior meeting and filed an OCR complaint against the district.

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

SECTION 504 COMPLIANCE ADVISOR

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OBLIGATIONS (continued from page 1)

❑ **Consider existing information.** If the student's behavior being analyzed during the MDR is related to the reason for his special education referral, then it may be a manifestation, Schulz said. But the student's history is the most important piece. Uncovering patterns of behavior may help you make a decision. For example, a student may be suspected of having autism, but his aggression may not be a manifestation of his disability if he has never shown a pattern of aggressive behavior in the past. "Look at everything the committee has to look at," he said. ■

What to do when doctor's note 'prescribes' 504 accommodations

During a Section 504 meeting, a parent shuffles through her bag, finds a slip of paper, and lays it on the table. The parent explains that a doctor diagnosed her daughter with ADHD and "prescribed" several accommodations.

Parents need not supply a medical provider's diagnosis for the student to be found eligible under Section 504. A team should, however, consider the doctor's note when determining a student's suspected impairment, said Alayna Siemonsma, Section 504 and dyslexia services coordinator at Montgomery (Texas) Independent School District.

Whether a student receives a Section 504 plan hinges on more than a doctor's recommendation. Teams must base a student's eligibility determination on a thorough evaluation including a variety of data. Below, find ways a 504 team can work effectively with doctors as part of evaluating a student who may have an impairment that substantially limits a major life activity.

Fully weigh doctor's input

"We absolutely consider any information that comes to us," said Siemonsma. "We think about it," she said. "Sometimes we have more questions."

The 504 team can incorporate the doctor's information when it's relevant to the evaluation, Siemonsma said. On the flip side, the doctor's findings and the team's findings may not always be consistent. If that is the case, it's critical to address it in the 504 meeting, she said. "We would share with the parent that the doctor provided this information; [however,] upon further evaluation, here's what we found," Siemonsma explained. Additionally, she said the team would go into depth on how it conducted the evaluation to arrive at its conclusion.

"Doctors make a medical diagnosis, and we, as a 504 committee, make educational diagnoses for the students," said Siemonsma. It's important to have educational diagnosticians, school psychologists, and those with dyslexia expertise review the data to facilitate decision-making around eligibility, she said. Decisions should be based on evaluations done through the district to ensure they align with federal law.

Collect data from multiple sources

"We're looking at a wide variety of data," said Siemonsma. For example, in her district, she said parents are asked about their concerns and what they see with their child at home. Parents also indicate what helps the student succeed.

Parents sign a consent for disclosure form to enable the 504 team to speak to their child's doctor, Siemonsma said. A medical provider can offer historical data, such as whether a student started walking or talking late. She added that school nurses might provide the results of hearing and vision exams and, if applicable, information based on a student's individual health plan.

Teachers can share up-to-date information on a student's performance in the classroom based on formal and informal data, said Siemonsma. This includes the results of state, unit, and weekly testing. "We want to make sure we have as many pieces of the puzzle as we can so that we [understand] the student's strengths and weaknesses," she said.

Determine need for 504 accommodations

A student may have a disability that qualifies her for a 504 plan but not accommodations, Siemonsma said. "We can provide a Section 504 plan. It just would not include any accommodations if they were not needed."

The 504 team must first ask the question: "Does the student have a physical or mental impairment?" said Siemonsma. If the answer is "no," then it is not necessary to proceed with a 504 plan, she said.

However, if the answer is "yes," the team should proceed to ask: "Is that physical or mental impairment substantially limiting one or more major life activities?" said Siemonsma. If the student fits this description, he qualifies for a 504 plan with accommodations but without medication taken into account.

For example, perhaps a student has been diagnosed with ADHD, and the doctor has prescribed medication to mitigate its effects, Siemonsma said. The student may not need a "laundry list" of accommodations because the medication is effective. He just needs equitable access to the curriculum, she said. ■

5 discrimination dangers hiding in nonacademic activities

Section 504 specifies that students with disabilities must have access to education that matches that of nondisabled students. 34 CFR 104.4. Review examples of five common ways in which discrimination shows up in nonacademic and extracurricular activities. Train educators to avoid these.

1. Lunchroom seating

Example: Assigning lunch tables based on class so that students with disabilities in a specialized class can only sit with each other.

2. Art, music classes

Example: Asking a student with muscular dystrophy and limited manual dexterity to sit out the part of music class when peers play instruments.

3. Field trips

Example: Failing to offer accommodations that allow a student with limited mobility to participate in a trip to the local zoo.

4. Physical education

Example: Placing a student who uses a wheelchair in an adaptive PE class that — compared to the gen ed class — offers very limited opportunity to experience various sports.

5. School special events

Example: Neglecting to invite students in a self-contained special education class to a school dance, concert, assembly, or pep rally. ■

Don't shut door on student's need for homebound services under Section 504

If a student with a disability and a Section 504 plan becomes seriously injured in a car crash, he may need a few weeks or months to recover.

Depending on his injuries, he may benefit from temporary "homebound services" to receive accommodations and services while he learns from home. What these entail will depend on his needs and what his state allows.

"Federal law has homebound and hospital as one part of the continuum [of alternative placements], but doesn't have any details about what that can look like," said Courtney Stillman, an attorney at Himes Petrarca & Fester, Chtd. in Chicago. "It's all on the state level."

Section 504 teams must review their obligations to provide students with 504 plans accommodations and services when they are temporarily unable to attend school. This will help ensure that students' access to FAPE isn't interrupted and child find obligations aren't violated. Adopt the following strategies to provide homebound services to students with 504 plans.

- **Check state regulations.** Check how your state handles students with 504 plans who need to temporarily recuperate outside of school, Stillman said. In many cases, students are offered their state's version of "homebound instruction" even if they don't have previous IEPs. To qualify, students may need to have a mental or physical illness and anticipate missing a certain number of school days, such as 10 in Illinois. Students may also need to receive a minimum number of hours of services per week. For example, in Illinois, unless a doctor says he can't tolerate them, a student

must receive at least five hours of services weekly from a certified teacher or related services provider.

• **Discuss student needs.** Meet as a 504 team to discuss the student's illness or impairment that will cause her to miss school and any restrictions her physician may have placed on her receiving services, Stillman said. Document the accommodations and related services that will be delivered during her recovery time. Be specific so the student receives these as expected. "Come together to consider the homebound request document, what services the student is going to receive, and the amount of time the student will receive homebound," she said.

• **Seek medical provider input.** Find out from a physician if the student has the stamina, concentration, or other skills needed to benefit from the hours of services the team decides are appropriate, Stillman said. If the student was receiving occupational therapy and broke his arm, for example, it may not be appropriate to provide OT, but it could be fitting to offer other related services.

• **Decide how student will receive services.** The student may benefit from virtual services or in-person services in her home, Stillman said. Depending on what your state allows, a student may also be able to go to another location, such as the library or a clinic, to receive services while she's recuperating. "It's hard to find people [to provide services] because it's typically going to be after school, [since] people are teaching during the day," she said.

• **Plan ahead for extension requests, return to school.** As the end of the student's homebound instruction approaches, parents may ask for an extension, Stillman said. Depending on the student's needs, this may be a child find trigger. The student may have a disability the school is not already addressing, she said. Or the student may need an IEP rather than a 504 plan and should undergo a special education evaluation.

A student with anxiety may seek an extension just to avoid whatever is making him anxious, and he should receive support to return rather than an extension. In *School District of Philadelphia*, 112 LRP 24706 (SEA PA 04/30/12), for example, a request for another 90 days of homebound placement for a student with a temporary mental illness should have raised a red flag to district personnel that an evaluation was due. The district breached its Section 504 child find obligations by inappropriately delaying a student's evaluation until a 13-month homebound placement ended. "If it's anxiety or depression, that's when we want to evaluate," she said. "Anxiety shouldn't keep you out of school."

If you do approve an extension, make sure you check in regularly to ensure the student is making progress during homebound placement and has support in place to return, Stillman said. ■

Afford students with Tourette syndrome suitable Section 504 accommodations

Imagine a teacher kicking a student with Tourette syndrome out of class for grunting and snorting. The teacher may think she is justified because the student repeatedly interrupted her lesson.

However, students with Tourette syndrome do not engage in challenging behaviors by choice. They have involuntary tics that can interfere with their learning, including blinking, body jerks, and humming. And they don't all shout expletives or make inappropriate gestures.

"It's such a misunderstood diagnosis, and there's really not a one-size-fits-all approach," said Anne Bradley, founder of Strategies and Solutions Group in Kansas City, Mo.

FAPE under Section 504 requires that districts provide education or related services designed to meet the needs of students with disabilities as adequately as the district meets the needs of students without disabilities. 34 CFR 104.33(b).

Students with Tourette syndrome may need accommodations to make progress inside and outside the classroom. Section 504 teams should ensure they understand a student's needs before they discuss what accommodations may be appropriate in a 504 plan. They need to prevent misplaced discipline and unintentional FAPE denials. Practicing the dos and don'ts below may help 504 teams make the right moves when it comes to supporting a student with Tourette syndrome.

✓ **Do clarify needs.** Make sure everybody in the 504 meeting understands what a student's specific form of Tourette syndrome looks like, Bradley said. Not every student is going to have the same tics. Also ensure that all members of the team understand that the student can't control his tic and is not doing it on purpose. He should not be disciplined in the future for any outbursts or physical tics. "Education goes a long way," she said. "If any members are expressing skepticism, that's an important conversation to have to make sure they understand the diagnosis."

× **Don't single out student.** Emphasize in the plan that teachers and other staff members should not single out the student when she has a tic, Bradley said. "You don't want to embarrass them any more than they already may be," she said. "You should treat them like any other student." Educators should give the student an opportunity to share her disability with the rest of her class if she wants to but not require her to disclose it, Bradley said.

✓ **Do offer accommodations.** The plan should include accommodations the student needs to cope with tics, Bradley said. These may include taking brief breaks during class if he needs to take a walk or stretch. "If they are experiencing stress or embarrassment, they can totally take a step outside," she said. The student should also have access to fidgets if they offer some relief. "That's absolutely appropriate to put in a 504 plan," she said.

The student may also benefit from academic accommodations, such as access to speech-to-text if he has poor penmanship, Bradley said. Don't hold back from offering the student technology if he has unintentionally damaged property in the past because of a tic. "Ensure the discussion is not like, 'We don't trust this student with a laptop because we think he's going to damage it,'" she said. "We want to make sure the student is still able to access their programming. Find a way that's safe for the student."

× **Don't overlook extracurricular activities, field trips.** The team should also discuss extracurricular activities, Bradley said. Students should not be automatically ineligible for sports because they may vocalize or move differently. "They should have the opportunity to try out and participate," she said.

Similarly, students with Tourette syndrome should have access to field trips, Bradley said. The team should discuss what such students may need to appropriately participate in activities off school grounds. It may be appropriate for a school to call ahead and let a museum know that a student who vocalizes is coming and should not be treated as if she were doing it on purpose. "They have to make that environment accessible," she said. ■

Attorneys say prepare for more delays, changes in pending proposed, final regs

With a change in presidential administration, special education professionals may be wondering what the shift will mean for pending proposed and final regulations. Will the latest final Title IX regulations be scrapped? Will educators ever see proposed Section 504 and FERPA regulations? While these questions cannot be answered definitively yet, school attorneys have some thoughts on what educators may see in the coming year.

"It's pretty typical for an incoming administration to put a hold or a freeze or a moratorium on existing proposals to change regulations," said Dave Richards, an attorney at Richards Lindsay & Martín LLP in Austin, Texas. "They tend to kind of stop that so they can get a look at everything first. I think what that means is probably a further delay of 504 proposed regs, which I guess shouldn't shock anybody."

Future of final Title IX regs

The latest Title IX final regulations may not be examined, Richards said. They are more likely to be "killed," he said.

What will be in their place is unclear, said Julia Martin, director of policy and government affairs at the Bruman Group PLLC in Washington, D.C.

"There could be an administrative move that repeals the rule and leaves Title IX unregulated ... while they write a new rule," she said. "Or they could revert to the 2020 rule while rewriting. The best course of action would probably be reverting to the 2020 rule as an interim final so they could go into effect and be enforced while they tinker around the edges in terms of what else they could do to strengthen the rule, justify the change against any litigation, and then make changes that their policy priorities might demand."

Recognize that any states that don't have an injunction against them are expected to implement the 2024 Title IX regulations because they went into effect Aug. 1, Martin said. The other states should continue to implement the 2020 regulations. They should be clear in any documentation about the timing of decisions while things are up in the air.

"Just watching and being aware of what's happening is going to be important," Martin said. "Make sure anytime they have a Title IX decision or a policy that is stated that they can point to what rule was in place at the time the policy was drafted or the decision was made. Districts are in a tricky spot because it feels like we're throwing our time into a black hole if we're spending time understanding these rules and implementing and understanding new policies that ultimately won't be required."

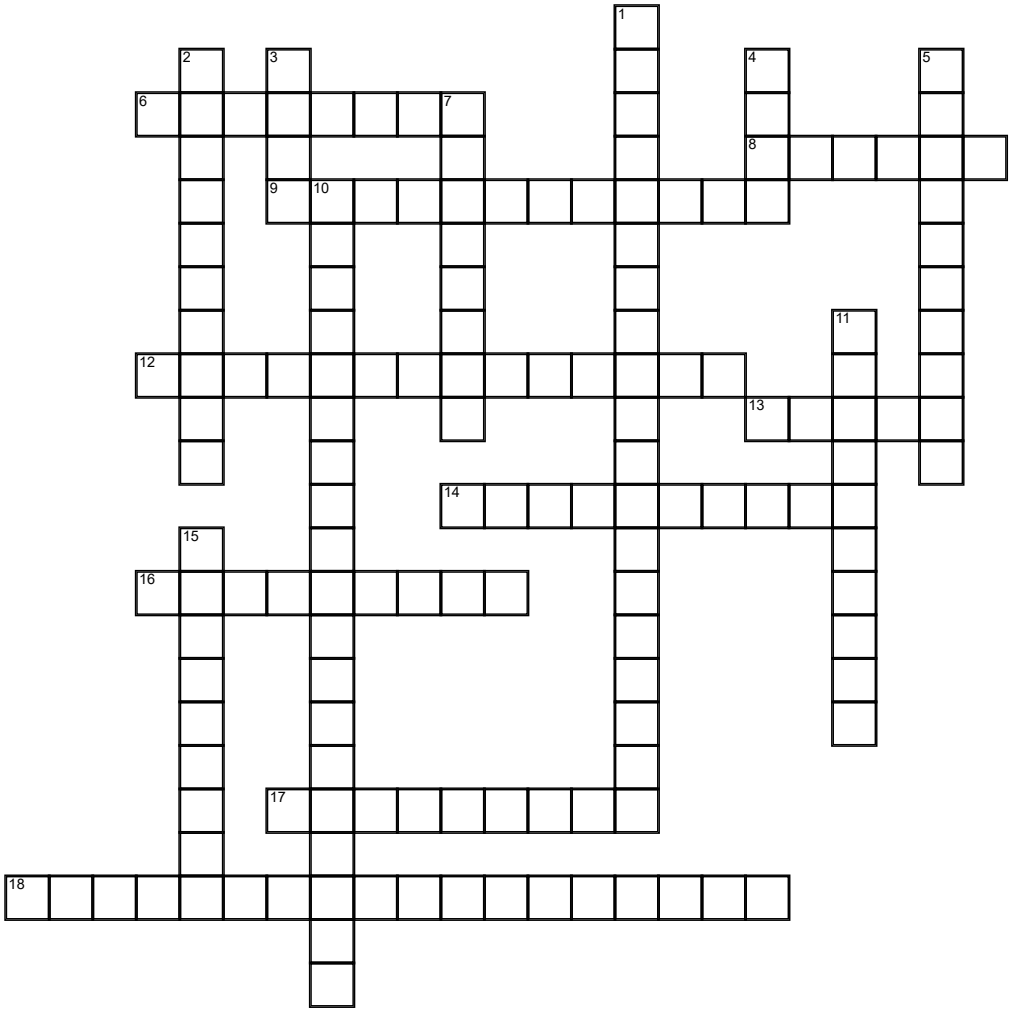
If the new administration changes anything about the 2020 regulations, Martin expects it to put forth a more limited definition of sex.

"I could see a narrow definition of sex, which excludes gender identity and sexual orientation and merely focuses on biological sex at birth," she said.

The administration may also choose to address protections for pregnant and parenting students, which were not addressed in the 2020 regulations, Martin said.

"I don't think it would be a conflict with their policy values to institute similar protections," she said. "But I could also see them saying, 'That's something that ... doesn't require a federal mandate.'"

Eligibility under Section 504, ADA



Across

6 Individual with impairment generally needn't provide scientific, medical, or statistical types of this

8 "Actual disability," "record of," and "regarded as" are three ___ under which individual may establish coverage

9 Disregard mitigating measures' ___ effects when making disability determinations

12 Students eligible under Section 504 are protected against disability-based ___

13 Law that restored protections from 1990 statute Congress intended for individuals with disabilities (acronym)

14 Ordinary ___ do not qualify as mitigating measures

16 Physical or mental impairment does not include one's ___

17 Minimum duration or expected duration of impairment's effects to be considered substantially limiting

18 E.g. medication, medical supplies, mobility devices, and low-vision devices (two words)

Down

1 Student must have physical or mental impairment that ___ one or more major life activities (two words)

2 Mitigating measures are relevant during this process to determine need for special education and related services

3 Student found ineligible under ___ may still be entitled to accommodations under Section 504 (acronym)

4 Under Section 504, eligible students receive accommodations that enable them to access ___ (acronym)

5 When subjected to action prohibited by the ADAAA, individual ___ having impairment is protected (two words)

7 Impairment that is ___ or in remission is disability if it substantially limits major life activity when active

10 E.g. caring for oneself, performing manual tasks, seeing, and hearing (three words)

11 Individual is not regarded as having disability if impairment is deemed both ___ and minor

15 "Substantially limits" is not meant to be a ___ standard

Section 504 changes may be enticing

Many may assume the proposed Section 504 regulations will be placed on the back burner, Richards said. However, the new administration may see value in updating the regulations sooner rather than later.

"There's a lot in what could be Section 504 that might be desirable to the folks moving into power," he said. "That involves parental rights. Increased procedures and parental rights would be a pretty significant piece of the new proposed regulations. That seems to be an area where there's some overlap with the new administration. That might be enticing. It's tough to tell."

Richards hopes that the proposed regulations are not shelved because districts need clarity.

"I would love to see changes going into effect because we've been waiting for so long," he said. "It's hard to keep people focused on compliance if they think things are going to change. Uncertainty is tough."

FERPA may be neutral territory

Both major political parties have concerns about maintaining child privacy, so the proposed FERPA regulations may be addressed early in the new administration, Martin said.

"I don't see that as a partisan issue because there is pretty broad bipartisan concern about the kinds of data that are collected on children," she said.

The proposed regulations may explicitly include education technology and apps in privacy protections, Martin said. ■

QUICK TIPS

Catch when chronic absenteeism may point to 504 eligibility. Recognize that a student's excessive absences may indicate a need for a Section 504 plan. For example, a student's anxiety may not rise to the level of needing specialized instruction under the IDEA, but she may need 504 accommodations to be able to come to school.

Don't stay married to 504 forms. Florida attorney Terry Harmon warned against using predetermined lists to develop student Section 504 plans. He suggested that the team go beyond the "buffet of accommodations" because there are other things that may benefit the student. Even if an accommodation is not on the list, it may still be relevant, Harmon said.

Disclose 504 plan to field trip chaperone. To keep students safe while they're away from school, it may be necessary to provide field trip chaperones with information about a student's Section 504 plan. The Family Educational Rights and Privacy Act allows schools to release student information to school officials who have a legitimate educational interest in the information without prior consent. A parent chaperone could fall into this category, said Brandon K. Wright with Miller, Tracy, Braun, Funk & Miller, LTD in Illinois. "If the chaperone needs to know certain information to help the school implement the student's plan during the trip, then the school can disclose that information without prior parental consent," he said.

Keep a physical copy of the Section 504 regulations. "Every 504 designee or coordinator should print out the regs and have them in their office," said Jose Martín, a school attorney with Richards, Lindsay & Martín. "It's not a lot of pages." Print out the parts of 34 CFR Part 104 that have to do with elementary and secondary education, he said.

Ensure each team member contributes during 504 meeting. A 504 coordinator should not be the sole person contributing at a student's 504 meeting. Team members are there to speak about the student, his disability, and the placement options available, said Dona Foster, supervisor of student supports for Carroll County (Md.) Public Schools. "I am a strict enforcer that the coordinator is not responsible for that entire meeting on their own. That's why it's called a *team* meeting," she said.

Remind staffers of MDR obligations under Section 504. Regardless of whether a student receives services under the IDEA or Section 504, the district must schedule a meeting before changing his educational placement for disciplinary reasons. Districts should ensure that relevant staff members understand their duty to conduct manifestation determination reviews for Section 504-eligible students. ■

Eligibility under Section 504, ADA crossword answers:

Across
6. Evidence
8. Prongs
9. Ameliorative
12. Discrimination
13. ADAAA
14. Eyeglasses
16. Sexuality
17. Six months
18. Mitigating measures

Down
1. Substantially limits
2. Evaluation
3. IDEA
4. FAPE
5. Regarded as
7. Episodic
10. Major life activities
11. Transitory
15. Demanding

5 ways to respond to student's rejection of Section 504 accommodations

A student's rejection of accommodations or services can lead to implementation failure claims. For example, a district avoided a Section 504 violation in *Cumberland County (NC) Schools*, 56 IDELR 25 (OCR 2010). But OCR cautioned that in allowing the student to decline to take tests in a separate room, the district could be setting itself up for a claim that it failed to implement the student's services. Review below actions to take if a student rejects his 504 accommodations.

Action	What it looks like
1. Document student's actions.	If a student refuses to use extended time or another accommodation, note when he completed his work and that he didn't use the additional time.
2. Interview student.	Find out why the student rejects an accommodation. For example, the student may be ashamed to look different from her classmates or frustrated that the accommodation doesn't help her.
3. Encourage student to use accommodation.	Don't just expect the student to use an accommodation because he needs it. Remind the student that he has supports available. Collaborate with the student to come up with preferred prompts, such as a hand signal or phrase, to encourage him to use an accommodation.
4. Offer incentives.	Recognize that the student may just need motivation to use her accommodations. It may make sense to give her a sticker for every time she uses text-to-speech when she needs it. Or you can give her an early release to recess if she remembers to pick up her class notes at the end of the day.
5. Discuss need for accommodation.	After a few weeks in which the student rejects an accommodation, discuss as a team whether he continues to need it. If the student is doing well without the accommodation, the team may be able to remove it from his 504 plan. If the student sometimes uses the accommodation but doesn't use it all the time, consider whether he needs to access it in a different way. For example, if the student doesn't like to pick up class notes in the front of his classroom, see whether he would rather have the teacher email him the notes before class starts. ■

504 plan to delay IDEA evaluation hints at bad faith, discrimination

Case name: *Clayton v. Fowlerville Cmty. Schs.*, 124 LRP 35307 (E.D. Mich. 09/30/24).

Ruling: The father of an 11-year-old boy with an adjustment disorder, PTSD, and other disabilities could pursue discrimination claims against the district that allegedly intentionally disregarded the student's educational and behavioral needs. The U.S. District Court, Eastern District of Michigan held that the father's Section 504, ADA Title II, and state law claims against the district could proceed.

What it means: A district shouldn't use the development of a Section 504 plan to delay the IDEA evaluation of a student with a disability. To avoid claims of intentional discrimination under Section 504 and Title II, a district should promptly initiate the evaluation process when a parent refers his child for special education. This district should have considered developing a 504 plan for a fifth-grader while it evaluated his eligibility for an IEP. Doing this would have enabled the district to address the student's behavioral needs, prevent his subsequent expulsion, and dispel the father's concerns that it was acting in bad faith.

Summary: A Michigan district's decision to develop a Section 504 plan for a grade schooler instead of conducting an IDEA evaluation supported a father's belief that the district acted in bad faith. Because the district may have discriminated against the student, a District Court declined to dismiss the father's Section 504 and Title II claims, at least for now.

To assert a viable Section 504 or Title II claim for compensatory damages, the father had to show the district intentionally discriminated against the student. Intentional discrimination means the district acted in bad faith or with gross misjudgment. Here, the father's allegations supported a reasonable inference that the district intentionally discriminated against the student, the court opined.

The student frequently presented inappropriate behaviors at school, which led to multiple suspensions. When the father requested an IDEA evaluation for the student, the district allegedly disregarded his request. Instead, it allegedly held a multidisciplinary meeting to review existing records and determined that the student's disabilities did not interfere with his learning. The district then allegedly developed a Section 504 plan.

Several months later, the district expelled the student due to his severe behaviors. According to the father, the district acted in bad faith when it developed a 504 plan for the student instead of conducting the requested IDEA evaluation. He contended that when a parent submitted an evaluation request, the district had a practice of reviewing existing data, developing a Section 504 plan, and then collecting data for six weeks. This practice unreasonably delayed students' special education evaluations, the father alleged. The court agreed. "This allegation, taken as true, supports a reasonable inference that the District intentionally delayed conducting [the student's] special education evaluation, which ultimately led to his expulsion," the court wrote.

The court declined to dismiss the father's discrimination claims at this stage of litigation. It also rejected the district's argument that the father's claims were barred due to lack of standing or to issue preclusion. ■

Assignment of untrained aide forces N.C. LEA to answer for teen's injuries

Case name: *Wells v. Moore County Schs. Bd. of Educ.*, 124 LRP 35338 (M.D.N.C. 09/30/24).

Ruling: A North Carolina district will have to defend Section 504 and ADA Title II claims arising out of a one-to-one aide's alleged physical assault of a nonverbal 17-year-old boy with autism. The U.S. District Court, Middle District of North Carolina denied the district's motion to dismiss the parents'

504 quick quiz

Q: May district exclude a student with a disability from field trip because of student's medical condition?

A: Yes, a district may prohibit a student with a disability from going on a field trip if it believes participation presents an unacceptable risk to the student's health or safety. A district that excludes a student on this basis, however, must be prepared to demonstrate that the exclusion is necessary.

If a district believes that a student's disability may give rise to safety issues, it should convene a Section 504 meeting to discuss the student's participation and the supports the student would need to safely participate. OCR closely scrutinizes exclusions from field trips based on health or safety concerns. *See, e.g., Lewis-Palmer (CO) Sch. Dist. #38*, 47 IDELR 111 (OCR 2006) (Because a Colorado district that excluded a student with ADHD from a field trip neither convened a 504 team to discuss the student's possible participation nor justified its decision, OCR concluded that the district violated Section 504).

disability discrimination claims for compensatory damages.

What it means: Districts dealing with staff shortages cannot simply hire unqualified individuals to serve as one-to-one special education aides and hope for the best. If the district fails to provide adequate training, it could be liable for any harm that an unqualified aide might inflict on a student with a disability. This district allegedly insisted that the newly hired aide continue working with the student despite the aide's repeated statements that he felt uncomfortable and unqualified. Had the district trained the aide instead of leaving him to his own devices, it might have prevented the aide's assault of the student.

Summary: Allegations that a North Carolina district assigned a newly hired special education aide to a nonverbal teenager with autism over the aide's protests were sufficient to support the parents' disability discrimination claims. The District Court held that the district's use of unqualified and untrained staff, if true, could entitle the student to compensatory damages under Section 504 and the ADA.

U.S. District Judge Thomas D. Schroeder explained that a student seeking money damages as a remedy for a Section 504 or ADA violation must allege some form of intentional discrimination. The judge acknowledged that the parties disputed whether the student needed to allege that the district acted in bad faith or with gross misjudgment or simply with deliberate indifference. However, the judge determined that the allegations in the student's complaint would satisfy either standard.

According to the complaint, the judge observed, the aide repeatedly told the district's special education director that he was not comfortable working with the student because he lacked the necessary background. Nonetheless, the administrator allegedly directed the aide to continue working with the student.

The parents claimed that the student, sensing the aide's discomfort, engaged in behaviors that prompted the aide to fend him off with a chair before striking the student in the face. Judge Schroeder cited the parents' claim that the district not only tried to conceal the incident from them but assigned the aide to a different classroom the next day. In addition, the parents alleged that district staff isolated the student from peers and group activities after the incident. The judge noted that such actions, if true, could prove the district intentionally discriminated against the student on the basis of disability. "Whether [the parents] can demonstrate that the [district's] response to [the aide's] actions amounted to deliberate indifference remains for another day," the judge wrote. ■

Mom's disagreement with location, not program sinks discrimination claim

Case name: *Thompson v. Lakeville Area Schs.*, 124 LRP 36399 (D. Minn. 10/08/24).

Ruling: The U.S. District Court, District of Minnesota held that the parent of a sixth-grader with a traumatic brain injury and a speech language impairment was not entitled to a preliminary injunction. The court found that the parent failed to demonstrate irreparable harm and the likelihood of success on her ADA Title II and Section 504 discrimination claims.

What it means: Under Section 504, a student is not entitled to placement in the school of his choice if the district's proposed placement is appropriate and adequately meets his needs. By showing that the parents of a student with TBI disagreed only with the location of their child's program and not the program itself, this district deflected a claim of disability discrimination. It pointed out that there was no threat of irreparable harm to the middle schooler if the educational services themselves were adequate.

Summary: A Minnesota district did not engage in unlawful disability discrimination by assigning a sixth-grader with TBI to a middle school that was not his neighborhood school. The parent failed to show that the student would suffer irreparable harm if he were required to attend the proposed placement, which was necessary to obtain a preliminary injunction.

The district placed the student in a developmental cognitive disability program. The parent requested that he be placed in his neighborhood school and suggested the district add a developmental cognitive disability program. The district declined the request.

The parent alleged that the district discriminated based on disability by prohibiting the student from attending his neighborhood school. She sought a preliminary injunction.

ADA Title II and Section 504 prohibit districts from discriminating against students based on disability, the court explained. Regarding the request for a preliminary injunction, the court considered the threat of irreparable harm to the parent, any injury to the district, the likelihood of success, and the public interest.

The court held that the student would not suffer significant harm if he attended the proposed place-

ment. A student is not entitled to attend a particular school, it explained. And, irreparable harm is only found when the educational services themselves are inadequate, not when the school location is at issue, the court added. It was undisputed that the student needed a developmental cognitive disability program and the proposed placement provided an adequate program; the parent disagreed only with the location, it pointed out.

The parent also did not demonstrate a likelihood of success on the merits of the claim, the court held. She failed to show that the district's placement decision was the product of disability discrimination, made in bad faith, or the result of a gross misjudgment, it added. Rather, the decision was based on sincere judgment about the placement that would best suit the student's individual needs, in addition to environment, accessibility, and staffing, the court determined.

It declined to discuss the public interest and balance of harms and denied the parent's motion. ■

Omission of key data from IDEA referral suggests 'bad faith' by Mo. district

Case name: *A.L. v. Special Sch. Dist. of St. Louis County*, 124 LRP 37562 (E.D. Mo. 10/24/24).

Ruling: A Missouri district will have to defend allegations that it discriminated against a 9-year-old boy with specific learning disabilities by taking several years to evaluate his need for IDEA services. The U.S. District Court, Eastern District of Missouri denied the district's motion to dismiss the parents' Section 504 and ADA Title II claims.

What it means: Poor communication between school staff can transform an ordinary IDEA violation into an act of bad faith or gross misjudgment under Section 504. A district can avoid this misstep by ensuring that the staff members who review special education referrals have accurate and complete information about students' ongoing struggles. In this case, the packet sent to the referral team did not include assessment scores, writing samples, or data from several years' worth of reading interventions. By failing to provide all relevant information, the district delayed the evaluation process unnecessarily and exposed itself to potential liability for disability discrimination.

Summary: A Missouri district's alleged disregard of key information when considering a 9-year-old boy's need for an IDEA evaluation could require it to provide additional relief for its child find violation. Holding that the parents sufficiently pleaded bad faith or gross misjudgment, the District Court denied the district's motion to dismiss the parents' Section 504 and ADA claims.

U.S. District Judge Henry Edward Autrey acknowledged that an administrative hearing commissioner had already ordered the district to provide the student with 1,386 minutes of compensatory education. However, the judge explained that parents seeking relief under Section 504 or Title II must allege more than an IDEA violation. In the 8th U.S. Circuit Court of Appeals, which includes Missouri, parents need to show that the district acted in bad faith or with gross misjudgment.

Judge Autrey determined that the parents in this case met that pleading standard. According to the parents, the judge observed, the student had struggled with reading since kindergarten despite receiving numerous interventions. The judge pointed out that the referral packet the district sent to an educational service agency did not include intervention data. Nor did the packet include the student's scores on reading assessments or samples of his writing.

The judge noted that the district's failure to include all relevant information could be viewed as a substantial deviation from accepted professional judgment, practice, or standards — evidence of wrongful intent. "Taking the well-pleaded allegations as true ... the court finds that [the parents] have adequately stated a claim for violations of [Section 504] and the ADA," the judge wrote.

The judge also allowed the parents to seek attorney's fees under the IDEA for the success they obtained in a due process decision at 123 LRP 34039. However, it dismissed the parents' appeal of one aspect of that decision as untimely. ■

Driver's alleged abuse, berating of teen germane to ADA, 504 discrimination

Case name: *Wagnon v. Rocklin Unified Sch. Dist.*, 124 LRP 38030 (E.D. Cal. 10/31/24).

Ruling: The U.S. District Court, Eastern District of California denied a district's motion to exclude relevant evidence of an ADA and Section 504 violation. It held that testimony and evidence of a bus driver's alleged abuse of a nonverbal high schooler with cerebral palsy was relevant to the parent's claim. Her discrimination and negligence claims could proceed to trial.

What it means: A district may be liable for disability discrimination and damages under Section 504 or the ADA if it intentionally or recklessly fails to provide meaningful access or reasonable accommodation to disabled persons. A parent only needs

to show the district had notice of the need for the accommodation. This district developed an IEP that called for behavior accommodations on the bus. It couldn't make a case that the bus driver, who allegedly abused the teen, wasn't required to follow his IEP or behavioral intervention plan. His actions were relevant to the issue of intentional discrimination or deliberate indifference.

Summary: The parent of a nonverbal teen with cerebral palsy will be able to introduce evidence of a bus driver's alleged practice of berating and abusing the teen for symptoms of his disability in her ADA and Section 504 lawsuit. Finding it relevant to the California district's alleged intentional discrimination or deliberate indifference, the District Court declined to exclude the testimony and evidence.

The parent alleged that the teen suffered abuse on the bus. The district moved to exclude testimony or evidence regarding the bus driver's failure to follow the teen's IEP or BIP, asserting that he wasn't required to implement them. But the parent argued that her claims were against the district, not the bus driver. She claimed that the district was aware of the teen's need for behavior accommodations in all school settings, as written in his IEP, including his bus ride to and from school.

To bring suit under ADA Title II and Section 504, the parent had to show that the teen had a disability and was denied a necessary, reasonable accommodation needed to meaningfully access district benefits and services, the District Court explained.

To establish deliberate indifference, the parents had to show the district actually knew of a substantial risk of serious harm but disregarded it, it added. The parent asserted that the district didn't train the bus driver on behavior response techniques to be used during transportation. This, she alleged, established its deliberate indifference to providing reasonable accommodations, the court noted.

The court held that the bus driver's failure to follow the teen's IEP and BIP was relevant to whether the district acted with intentional or deliberate indifference in providing him meaningful access or reasonable accommodations during his bus ride. Accordingly, the court denied the district's motion to exclude the evidence. With regard to the mother's claim that she suffered harm from the district's negligence, she asserted that the school owed her a duty of care because it stood in *loco parentis*.

The court decided she stated a viable claim and established a "special relationship" between her and the bus driver in providing special education transportation services, delivering the teen to and from school, and protecting him from harm. Accordingly, it declined to exclude evidence regarding her negligence claim. ■