

# Section 504 COMPLIANCE ADVISOR

ROUTE TO	

Your Guide to Understanding and Administering Section 504

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## Resist automatically saying 'no' to unforeseen Section 504 evaluation requests

Out of nowhere, parents may request an evaluation under Section 504 for their child. You may not be aware of the student's needs, and staff members may not have concerns about her progress.

Although a district is not required to conduct an initial evaluation upon parental demand, resist automatically saying no when caught off guard.

"A district that might say no to an IDEA evaluation may want to err on the side of doing an evaluation under Section 504 ... because it covers a much broader array of disabilities or physical and mental impairments," said Maureen Anichini Lemon, an attorney at Ottosen DiNolfo Hasenbalg & Castaldo Ltd. in Naperville, Ill. "And [a student can be] technically eligible for protections under Section 504 even if [she] doesn't need a 504 plan."

Section 504 coordinators and other team members must clarify what they should consider before refusing to evaluate a student. Denying a student a 504 evaluation without exploring his needs could lead to a child find violation. They should also confirm what to share if they decide not to evaluate. Weigh the considerations below before refusing to evaluate a student under Section 504.

### What to weigh before denying parent request for Section 504 evaluation

Consideration	What it entails
<b>Acknowledge that student could be technically eligible under 504.</b>	The student may have no behavioral or academic issues that seem to impact his learning but still be technically eligible for Section 504, Lemon said. He may have a physical or mental impairment that substantially limits one or more major life activities but not require a Section 504 plan and still be protected by the nondiscrimination provisions of the law. "[Students that are technically eligible are] entitled to not being disciplined excessively, equal access to extracurricular and non-curricular activities, periodic evaluation, and not being discriminated against," Lemon said.
<b>Recognize that one source of information is not enough.</b>	If parents provide a <u>medical diagnosis</u> from a private physician, don't just accept it and forgo the evaluation, said Lemon. "A district cannot simply take one piece of data and give that child a 504 plan," she said. "[The diagnosis] would trigger the evaluation process. The evaluation requires a variety of sources of information to be complete."

(See **REQUESTS** on page 3)

## Did district fail to evaluate before taking student 'off his IEP?'

The district conducted an initial evaluation of the student and determined he wasn't eligible for special education. It subsequently reevaluated and determined he qualified for special education services. At the annual IEP review, the team noted that the student met his IEP goals and was able to progress in the regular education curriculum without special education services. It determined that he was no longer eligible under the IDEA. For each evaluation, the district reviewed existing data, additional information, and additional assessments.

The parent contacted OCR and alleged that the district failed to properly evaluate the student before exiting him from services.

ADA Title II and Section 504 require districts to conduct an evaluation of any student who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to his initial placement and any subsequent significant change in placement.

**Did Mo. district significantly change student's placement without first evaluating?**

**A. No.** The district evaluated the student three times before exiting him from special education services.

**B. Yes.** A review of existing data was not a sufficiently comprehensive evaluation.

**C. No.** Exiting the student from services was not a significant change of placement.

How the Office for Civil Rights found: A.

In *Appleton City R-II (MO) School District*, 124 LRP 40025 (OCR 03/22/23), OCR found insufficient evidence to conclude that the district discriminated. Rather, the district evaluated the student at least three times prior to making the decision to exit him from services. In the most recent evaluation, the team determined that he no longer met the criteria for special education services.

Therefore, there was insufficient evidence that the district failed to conduct an evaluation prior to significantly changing the student's placement.

The district provided procedural safeguards to the parent, OCR added. And, while she disagreed with the eligibility determination, there was no evidence that she filed a due process complaint.

B is incorrect. OCR doesn't review or second-guess the result of individual evaluation, placement, and other educational decisions as long as a district follows the procedural requirements of ADA Title II and Section 504, OCR wrote. Substantive disagreements over a student's evaluation, services, placement, or program are more appropriately addressed through a due process proceeding.

C is incorrect. Terminating a student's eligibility for special education services is a significant change of placement.

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

### SECTION 504 COMPLIANCE ADVISOR

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**REQUESTS** (continued from page 1)

What to weigh before denying parent request for Section 504 evaluation	
Consideration	What it entails
<b>Explore parent concerns about the future.</b>	The parents may ask for an evaluation as their child approaches postsecondary transition, Lemon said. They may want to secure testing accommodations for college entrance exams and college.  “That’s when you might get a request that really has no basis,” she said. “There’s no reasonable basis to suspect that the student has a disability.” Yet, it may make sense to do an evaluation anyway, Lemon said. “Then you have that defense if the parent files a complaint with OCR or otherwise challenges the decision.”
<b>Ponder documentation.</b>	If the district decides not to evaluate, provide parents with their 504 procedural safeguards, said Lemon. Best practice is to provide the reasoning behind the decision. Section 504 does not explicitly require a written explanation of the basis for the refusal to conduct the evaluation. <i>OCR Memorandum</i> , 19 IDELR 876 (OCR 1993); and <i>Solanco Sch. Dist. v. C.H.B.</i> , 68 IDELR 62 (E.D. Pa. 2016) (noting that Section 504 does not identify any specific circumstances in which districts must provide prior written notice).

“If there’s no hospitalizations, no truancy, no behavioral issues, no academic concerns, no medical diagnosis — really no basis to believe that the student needs special education or related services — then a school district could say no,” Lemon said. “But they would need to fully explain their reasons in a prior written notice, plus provide the procedural safeguards to the parents. You have to have really solid information and data to support a denial of the request.” ■

## Ask 4 questions before green-lighting homebound instruction for 504 student

Some Section 504 teams may jump at the chance to offer homebound instruction for a student with a disability. Not so fast, said Dave Richards, an attorney at Richards, Lindsay & Martín in Austin, Texas.

This temporary service offers a way to educate students with physical or mental health care needs and who can’t physically be in the classroom for a time. The problem is that students might struggle to make the transition back to school.

Calling homebound instruction “a disfavored placement,” Richards said it should not be a go-to solution in light of the least restrictive environment mandate.

504 teams should be careful when assigning homebound instruction, recognizing possible risks it poses for students’ educational access. Consider whether student needs justify such a restrictive setting. The following four questions will help your 504 team decide if homebound instruction offers a clear path to FAPE.

### 1. Does the student want to participate in extracurricular activities while receiving homebound instruction?

“If the student is restricted to home, that means he’s only leaving for purposes of medical care or a mental health visit,” Richards said. The general rule of thumb is that if the student is too confined to come to school for educational purposes, he is too confined for extracurricular activities.

While this advice is logical, Richards said Office for Civil Rights has consistently asked schools to make more nuanced determinations on whether nonacademic and extracurricular participation can occur during

homebound instruction. For example, in *Logan County (WV) Schools*, 55 IDELR 297 (OCR 2010), the district’s decision to assign the student to homebound instruction was found to be discriminatory under Section 504 and the ADA because it prevented him from participating in extracurricular activities.

The fact that the student wants to attend some events — assuming a doctor agrees that some attendance is medically safe — can actually be helpful for transition, said Richards. If students want to partake in activities, 504 teams should use that to their advantage and motivate students to come to school. “If you can twerk at school, you can work at school,” he said.

### 2. Is the student’s home too dangerous or distracting for homebound instruction, and how might that impede learning?

Teams need to examine the student’s residence and forego homebound instruction services unless education can proceed in a safe environment, Richards said. “I run into situations where ... there’s simply no quiet place for [the student] to be able to do instruction when the teacher comes over, or there are illegal drugs and guns openly displayed.”

It takes work to schedule when and where the student will receive instruction, Richards added. When students are not in the school environment, distractions can creep in, making homebound instruction a lot more difficult, he said.

### 3. How long do we intend for the student to be on homebound instruction?

“When we put [students] on homebound, we [should] talk immediately at that same meeting about what transition back to school looks like,” said Richards. The team should emphasize to parents and the student that homebound instruction is not long-term. Sadly, Richards said, the longer a student is on homebound, the harder it can be to get them back to school.

Richards said 504 teams should also discuss how to address barriers preventing the student’s return to the school setting. In the case of a student with anxiety and trauma, Richards said collaborating with a health care professional could assist in the transition from homebound instruction to in-class instruction.

Additional strategies might include sending a student back to school in small doses and letting her know

about the team’s efforts to ensure a smooth transition, said Richards.

#### 4. Do we have enough data?

Look at data from the student, teacher, parents, and medical providers to get a feel for the student’s progress in school, said Richards. Teams can also consider the student’s activities outside of school hours — such as working or playing sports — to reveal if further confinement is necessary.

“In most places, in order for a student to be put on homebound, there has to be some sort of medical doctor’s note that the student is confined,” Richards said. The doctor’s note will not guarantee placement, however. “That’s up to the 504 committee,” he said. Doctors aren’t knowledgeable about LRE and don’t have a FAPE responsibility in the ways that educators do, Richards added. ■

<b>Parent consent form</b> <b>Administration of medication by school personnel</b>		
<u><b>Name of Medication</b></u>	<u><b>Dosage</b></u>	<u><b>Time(s) to be administered</b></u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
Possible side effects of medication(s): _____		
Medical provider’s name: _____		Office number: _____
Medical provider’s signature: _____		Date: _____

## This strategy works like a charm to prevent behavior problems

Sometimes behavior expectations take students with disabilities by surprise. They may not realize they've acted inappropriately until they're already facing consequences.

"In all fairness to them, students don't know what may be expected," said Beverley Johns, a learning and behavior consultant in Jacksonville, Ill. "We make assumptions that they will know, and they don't."

Remember that students with autism, anxiety, or other conditions might find stepping into novel settings particularly difficult. Precorrection — a proactive effort to teach, model, and practice expected behavior — offers a powerful strategy to support these students.

IEP and 504 team members should think ahead about new situations that children with disabilities might encounter and consider whether they are fully prepared. Using precorrection can prevent behavior challenges before they start, reducing disciplinary removals and clearing the way toward academic and social progress. Draw on Johns' advice to implement precorrection with confidence and compliance.

### Reduce surprises, embrace reminders

Often when students get in trouble within a particular setting, Johns said, "We really didn't do our job of teaching them what was expected in that setting. [Educators] sometimes forget that we have to teach behavior just like we teach academics."

Precorrection involves preparing students step-by-step to minimize surprises in challenging situations, Johns said. "Do the planning and be respectful of students on the front end. You can't say, 'Well, they should just know how to do that.' Don't assume students know. Teach it to them."

Complicating matters, Johns said schools have a "hidden curriculum" of social skills. "It's difficult for children to pick those up by what I call 'osmosis.'" They need explicit instruction, she said. For example, "I used to take a lot of kids out on field trips," Johns said. "We would go over what was expected, who you stayed with during the trip, and that you were expected to be polite."

In addition, Johns advised, don't simply communicate behavior expectations. Remember to model and rehearse them, and offer positive reinforcement when students follow the rules. "We have a whole new population of teachers and paraprofessionals and administrators coming

into schools who may not know how to do this," she said.

Another often-neglected part of effective behavior management is reminders, Johns said. Teachers who post classroom behavior expectations at the beginning of the year often take them down by February, she noted. "They say, 'Oh, students ought to know this by now.' Well, [students] still need visual reminders of what is expected of them."

### Signal expectations silently

Signals are another important facet of precorrection, Johns said. And the more you can use visual signals rather than verbal cues, the better.

"If a child does something incorrectly and you correct that auditorily, everybody hears it," said Johns. But if you use a visual signal decided upon privately between teacher and student, the child gets the reminder without being embarrassed.

Johns shared the example of a silent signal a teacher developed for a middle-school student with autism in a large math class. Instead of verbally calling him out when she saw him becoming agitated, the teacher put a sticky note on her pencil. The student had agreed to use the sticky note as his cue to calm down, Johns said.

### Customize precorrection strategies

Before adding precorrection strategies such as rehearsal of expected behaviors to a student's IEP, 504 plan, or behavioral intervention plan, understand what she does and does not respond to, Johns said. Consult staff members who really know her and can provide specifics. For instance, Johns shared, loud noises or large groups may represent a difficult environment for the student.

"Outline the triggers and how the child reacts to specific situations," Johns said, and then decide how to accommodate and teach that student to adjust to those situations. It's also important to set behavior expectations that reflect the student's developmental level.

For a child struggling with loud noises, Johns said an accommodation might involve early arrival in a space that's expected to become louder as it fills up. With a school assembly, for example, Johns recommended taking the whole class beforehand. This allows everyone, including the student with disabilities, to gradually adjust to the increasing volume. ■



## Run tight ship on 504 compliance with strong procedures manual for staff

Teachers and other staff members who are new to Section 504 may benefit from receiving a thorough procedures manual to ensure they are using best practices when working with students who have 504 plans.

“It’s important to be able to provide direct information so that they can help carry out that plan,” said Carrie Lutz, special education director and nondiscrimination coordinator at Colchester (Vt.) School District.

Section 504 coordinators may want to review existing procedure manuals to ensure staff members who are new to 504 will understand federal requirements and best practices. This can prevent staff from inadvertently violating child find obligations, failing to offer appropriate accommodations, or missing deadlines. Use these suggestions to fine-tune a Section 504 manual that supports staff compliance when working with students with 504 plans.

### ☑ **Demystify meaning of ‘major life activities’**

To be eligible under Section 504, a student must be determined, as a result of an evaluation, to have a “physical or mental impairment” that “substantially limits one or more major life activities.” 28 CFR 35.108 (a)(1)(i). Staff members may be confused about what this means, Lutz said. You can clarify the meaning in the manual. “It would be good to spell out what ‘substantially limits a major life activity’ means,” she said. “Especially when you’re looking at areas around anxiety, depression, and other social-emotional areas, folks sometimes don’t know the line. They don’t know how that limits a major life activity or how it limits access in school. The line blurs from, ‘Is this a 504 issue around access and rights, or is this a special

education issue where specially designed instruction is needed?’”

### ☑ **Emphasize relevant accommodations**

It may be helpful to include a detailed list of accommodations, Lutz said. Just emphasize the importance of figuring out which accommodations an individual student needs, rather than which accommodations tend to help students with a particular disability. “Have the team really take some time to look at what the needs are of the student,” she said. “How do we make sure that the accommodations that we’re giving are ones that are helpful and the ones that they require for access?” If circumstances change, you can always come together again as a team and try other accommodations, Lutz said.

### ☑ **Provide forms, tools**

To ensure staff members understand students’ needs, include information on common disabilities and disorders, Lutz said. Also incorporate federal guidance and other resources, including forms and tools for collecting data and addressing various issues. “You could include a chart on expected development in the area of executive functioning at various levels, so that if folks are feeling like students are struggling, they can make sure they [consider appropriate] accommodations,” she said.

### ☑ **Clarify deadlines**

Set timelines for reviewing student data to ensure student accommodations are suitable and access issues are being mitigated, Lutz said. “What is the frequency of that? What is our standard?” she said. “That’s so you know you’re keeping on top of it.” ■

## Quick Tips

### **Include dates to show that 504 data are current.**

When documenting the evaluations and other data the 504 team reviews to determine eligibility or develop a plan, consider listing a date beside each item. This will help show the data the team relied on were current.

**Watch for depression as 504 disability.** Major depressive disorder can substantially limit major life activities such as thinking, concentrating, and caring for oneself. It can be established through a doctor’s or psychologist’s evaluation or without any documentation or medical tests. District staff should look for signs such as sadness, irritability, or low energy.

### **View bullying report through Section 504 lens.**

When reports surface that a student with a disability has been bullied, the school should ask the following questions to determine whether Section 504 issues might be involved:

1. Was a student with a disability bullied by one or more students based on her disability?
2. Was the bullying conduct sufficiently serious to create a hostile environment?
3. Did the school know or should it have known of the conduct?
4. Did the school fail to take prompt, effective steps

reasonably calculated to end the conduct, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects?

**Use questions, activities to check for 504 mastery.** Develop questions about your district's Section 504 process to identify where building-level 504 staffers might need more training. Try asking survey questions such as, "What's the process when parents disagree with a 504 team's decision?" Assess knowledge of parental rights, grievance procedures, and the OCR complaint process.

**Share relevant IEPs, 504 plans with substitute teachers.** All teachers and staff members who may be involved in disciplining a student with a disability must have access to the student's Section 504 plan or IEP to ensure effective implementation. Substitute teachers are often forgotten in this list, but they need to have all the relevant information to implement students' accommodations and supports.

**Don't substitute 504 plan for evaluation.** Missouri attorney Betsey Helfrich advised that you explain to staff that a Section 504 plan is not a substitute for an IDEA evaluation once the district is on notice of acts or behavior likely to indicate a disability. Also, inform teams that there's no "automatic referral" for a 504 plan if a student doesn't qualify for special education.

**Limit who has access to electronic 504 records.** A school is obligated under FERPA to put protections in place so that students' electronic records cannot be

easily accessed by individuals without a legitimate interest in the information, said Gwen J. Zittoun with Shipman & Goodwin LLP in Hartford, Conn. It may be helpful to allow electronic access to a limited number of staff members who then pass on the information to others on a need-to-know basis.

**Consider 504 plan for student with temporary disability.** While the IDEA generally precludes eligibility for temporary disabilities, a student may receive accommodations under Section 504 and the ADA if his temporary disability substantially limits one or more major life activities. Because eligibility will be based on individual circumstances, evaluate each student's needs instead of implementing a blanket eligibility policy. *Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Education of Children with Disabilities*, 67 IDELR 189 (OCR 2015).

**Provide input forms to teachers who can't attend a 504 meeting.** It may not be necessary or possible to include all of a student's teachers at his Section 504 meeting. Instead, send a form or a survey asking them what information they have about the student and what interventions they've tried.

**Consider language, culture in 504 evaluations.** In interpreting evaluation data and making placement decisions, Section 504 requires districts to draw information from a variety of sources, including the student's cultural background, which OCR interprets to include linguistic background. ■

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## Accommodations for students with epilepsy

Students with epilepsy should have individual health plans that spell out their medication needs as well any services provided by school nurses. But they may also require Section 504 plans because Title II of the ADA recognizes that such impairments “virtually always” will substantially limit a major life activity. 28 CFR 35.108(d) (2)(ii). The plan should contain special education and related aids and services designed to meet their individual needs as adequately as the needs of nondisabled students are met.

Below, check out common accommodations for students with epilepsy.

Student challenge	Accommodations
Missing lessons and tests due to medical appointments, seizures, and recovery time	<ul style="list-style-type: none"> <li>• Extended time.</li> <li>• Reduced assignments.</li> <li>• Tutoring or similar supports.</li> </ul>
Exhibiting signs of an impending seizure	<ul style="list-style-type: none"> <li>• Preferential seating close to teachers.</li> </ul>
Falling behind academically	<ul style="list-style-type: none"> <li>• Frequent parent communication.</li> <li>• Progress monitoring.</li> </ul>
Difficulty maintaining sustained attention	<ul style="list-style-type: none"> <li>• Access to class notes.</li> <li>• Notetaker services.</li> <li>• Teacher-recorded directions and lessons (an older student might record these herself).</li> <li>• Written/oral reminders of important announcements.</li> </ul>
Experiencing decreased energy before or after a seizure	<ul style="list-style-type: none"> <li>• Time and a quiet location for rest and recovery.</li> </ul>
Being exposed to environments that trigger seizures	<ul style="list-style-type: none"> <li>• Alternate ways to participate in academic and nonacademic activities and environments that involve flashing lights or long periods of screen time to avoid triggering the student's seizures.</li> </ul>
Showing difficulty with emergency drills or evacuations during actual emergencies	<ul style="list-style-type: none"> <li>• Accommodation to exiting the building prior to drills to prevent exposure to triggers.</li> <li>• Alternate evacuation plan during actual emergencies. ■</li> </ul>



## Failing to give extra test time on virtual platform violates child's 504 plan

**Case name:** Polk County (FL) Pub. Schs., 124 LRP 42037 (OCR 01/11/24).

**Ruling:** OCR determined that a Florida district may have violated Section 504 and Title II when it allegedly failed to properly implement the Section 504 plan of a third-grader with ADHD. To remedy potential FAPE violation, the district pledged in a resolution agreement to provide the student any necessary compensatory services and conduct staff training.

**What it means:** If a student is entitled to testing accommodations under a Section 504 plan, the district should consistently provide those accommodations in both written and virtual tests. To prevent implementation failures, the district should identify and train those responsible for preparing accommodations in testing platforms. Here, the district should have promptly notified staff at the third-grader's magnet school that they were responsible for setting up accommodations on Istation, a computer-based reading intervention program. This would have ensured the student received double time on all virtual Istation progress tests as required by her 504 plan and prevented the parent's OCR complaint.

**Summary:** Evidence that teachers were unaware they could set up accommodations for students using a computer-based reading intervention program bolstered a parent's claim that a Florida district denied her third-grader FAPE. Although the district may have failed to provide the child the extra time required by her Section 504 plan, OCR closed the parent's disability discrimination complaint once the district executed a resolution agreement.

Under Section 504 and Title II, a district must provide FAPE to all eligible students with disabilities in its jurisdiction. To that end, the district must implement a student's Section 504 plan as written. The district may have violated this implementation requirement, OCR determined.

The student's 504 plan required her to receive "double time on classroom assignments and tests." The parent alleged that the district failed to provide this accommodation on progress assessments on Istation. OCR noted that Istation is a computer-based reading intervention program, which the district was using to provide the student tiered interventions and pull-out instruction in reading fluency for 30 minutes.

In conversations with OCR, the district acknowledged that it failed to provide the student "double

time" on two Istation progress assessments between September and December 2022. It explained that teachers at the student's magnet school were initially unaware that they were responsible for setting up accommodations in Istation. The district's director of student services only became aware of this issue when the parent complained about the accommodation mishap and she subsequently followed up with the magnet school director, OCR observed.

Before OCR determined whether the implementation failure violated Section 504 or Title II, the district executed a resolution agreement. It promised to provide the student any necessary compensatory services and conduct staff training. It also pledged to provide compensatory services to any other students with disabilities who may have been deprived of accommodations. ■

## Suspected disability entitles pupil to MDR before suspensions

**Case name:** Wayne STEM Acad. (NC), 124 LRP 42067 (OCR 04/25/24).

**Ruling:** A North Carolina charter school may have violated Section 504 and Title II when it failed to conduct a manifestation determination review before suspending a student with a suspected disability. OCR closed the parent's disability discrimination complaint after the school pledged in a resolution agreement to provide any necessary compensatory services, expunge the suspensions from the student's record, and conduct staff training.

**What it means:** If a district seeks to suspend a student with a suspected disability for 10 days or more, it should first conduct an MDR. Because Section 504's disciplinary protections may extend to students with disabilities who have not yet been found eligible, conducting the MDR is in the district's best interest. When this student presented severe behavioral issues, the school improperly subjected him to a series of short-term and long-term suspensions. Had the school instead conducted an MDR and evaluated the student's eligibility, it may have been able to develop interventions to reduce the student's behaviors without removing him from school.

**Summary:** Because a North Carolina charter school was aware that a student may have a had disability, it erred in suspending the student for "significant behavior issues" without first conducting an MDR. Without determining whether a Section 504 and Title II violation occurred, OCR concluded that the school could resolve the matter by executing a resolution agreement.

Under Section 504 and Title II, a district must evaluate a student with a disability or suspected disability before significantly changing the student's placement. A district subjects a student to a significant change in placement if it: 1) suspends him for more than 10 consecutive days; or 2) imposes a pattern of short-term suspensions that total more than 10 consecutive days. The school may have violated this MDR requirement, OCR determined.

When the student initially enrolled in the charter school, the mother informed staffers, including the school's executive director, that the student may have a disability. She requested an IEP, OCR noted. She also followed up numerous times via email.

Despite the mother's multiple requests and inquiries about an IEP, OCR found no evidence that the school ever evaluated the student's eligibility under the IDEA or Section 504. Moreover, OCR learned that the school repeatedly disciplined the student when he presented "a series of significant behavior issues." This included multiple short-term and long-term suspensions that totaled more than 10 days during the school year, OCR observed.

Because the school was aware of the student's suspected disability, OCR opined that it should have conducted an MDR. Instead, it began to take steps to evaluate the student only after OCR opened the complaint for investigation, OCR highlighted.

Before OCR completed its investigation, the school executed a resolution agreement. It promised to provide the student any necessary compensatory or remedial services and expunge the suspensions from the student's record. It also pledged to conduct staff training. OCR closed the complaint. ■

## Kan. school gives child with 504 plan 10-day suspension without MDR

**Case name:** *Fort Larned (KS) Unified Sch. Dist.* 495, 124 LRP 42847 (OCR 04/19/24).

**Ruling:** A Kansas district agreed to resolve allegations that it suspended a middle-schooler with an undisclosed disability for 10 days without conducting a manifestation determination review, in violation of ADA Title II and Section 504. The district agreed to conduct an MDR, determine whether compensatory services are due, provide them, and expunge the student's education record. It also agreed to develop and implement procedures for conducting MDRs, provide training, and conduct a record review to identify and remedy other instances when an MDR was required and not completed. The Office for Civil Rights will monitor the district's implementation of the agreement.

**What it means:** Before significantly changing the placement of a student with a disability, such as by suspending him for more than 10 consecutive school days, a district must conduct an MDR to comply with Section 504. In this case, the district did not determine whether the student's alleged assault of someone at school was related to his disability before suspending him for 10 days. By retraining special education staff on the requirements for MDRs prior to disciplining students with disabilities, the district may avoid future discrimination claims.

**Summary:** A Kansas district may have discriminated against a middle-schooler with an undisclosed disability by failing to reevaluate him before suspending him for 10 days. The district agreed to resolve OCR's concerns by conducting an MDR.

On one occasion, the student was sent to the office for allegedly assaulting someone at school. The principal issued a suspension for 10 days.

The parent alleged that the student's 504 team did not meet, nor was there an MDR, reevaluation, or consideration of modifying the student's placement in light of his behavior prior to the suspension.

ADA Title II and Section 504 require a district to reevaluate a student with a disability before any significant change in placement, OCR explained. When a significant change in placement is for disciplinary reasons, the first step in a reevaluation is to determine whether the student's disability caused the misconduct, it remarked. OCR considers an expulsion, long-term suspension, or other disciplinary exclusion of more than 10 school days to be a significant change in placement. A series of short-term exclusions that add up to more than 10 days and cre-

## 504 quick quiz

**Q: Could pulling students out of general education classes for specialized services violate Section 504?**

**A:** If using pull-out services for a student results in the student losing a significant amount of curriculum-based instruction, it could amount to Section 504 discrimination. See, e.g., *F.C. v. New York City Dep't of Educ.*, 68 IDELR 63 (S.D.N.Y. 2016). In the *F.C.* case, the court explained that the district deprived the student of the five hours of daily instruction required by state law because of its scheduling of IDEA services. The court held that the policy under which the student was removed from instructional classes to receive special education, related services, and compensatory services deprived him of the educational benefits that his peers without disabilities were entitled to and that he would have received but for his disability.

ate a pattern of exclusions may also be a significant change in placement, it added.

The principal stated that the student's behavior, combined with other discipline referrals, posed a risk to the safety of staff and students, which justified a long-term suspension, OCR noted. However, the record contained no information about the student's disabilities or a manifestation determination, OCR observed.

OCR expressed concern that the district did not make a manifestation determination as required by Section 504 before suspending the student for more than 10 consecutive school days. Prior to the completion of its investigation, the district expressed interest in resolving the complaint pursuant to a resolution agreement. ■

### Ariz. district discriminates by requiring students to earn time in specials

**Case name:** *Apache Junction (AZ) Unified Sch. Dist. #43*, 124 LRP 42851 (OCR 04/09/24).

**Ruling:** An Arizona district resolved with OCR allegations that it discriminated in violation of ADA Title II and Section 504 by requiring students with emotional disabilities to earn time in general education classes. It agreed to conduct an audit to determine whether students were excluded or denied equal access to nonacademic services. If so, the district will revise students' schedules and determine compensatory education due. It will also review and revise its policies and procedures that suggest that students with disabilities may earn time in the general education setting.

**What it means:** The ADA's and Section 504's prohibition against disability-based discrimination extends to nonacademic and extracurricular services and activities. In this case, the district could not dispute that it excluded students in a self-contained class by requiring them to earn points to participate in art, music, and physical education with their nondisabled peers. By using a one-size-fits-all points system, the district didn't educate them alongside their nondisabled peers to the maximum extent appropriate. It should have made an individualized decision about the amount of time each student spent in general education, that aligned with their IEPs, rather than varying from day to day.

**Summary:** Because an Arizona district required students with ED to earn time in specials through a one-size-fits-all point system, it agreed to resolve allegations of discrimination with OCR. The district committed to conducting an audit, revising schedules, offering compensatory education, and reviewing and revising its policies and procedures.

A former district employee contacted OCR alleging that the district discriminated against students with ED and excluded them by making them earn points to attend specials such as art, library, music, and physical education. She asserted that students in the segregated special class weren't included in specials with their nondisabled peers.

ADA Title II and Section 504 require schools to provide nonacademic and extracurricular services and activities in a manner that provides students with disabilities an equal opportunity for participation, OCR explained. And districts may not discriminate based on disability by providing students with disabilities separate or different physical education courses than those offered to nondisabled students, it added. They must participate with nondisabled students to the maximum extent appropriate to their needs, OCR noted.

OCR identified compliance concerns. First, OCR was concerned that students with disabilities were being denied equal access to nonacademic services, including but not limited to physical education.

Second, OCR expressed concern that students with disabilities may have sometimes received PE that was separate or different than what was offered to students without disabilities.

Third, OCR was concerned that "decisions regarding placement in the regular educational environment for specials [were] being made unilaterally by teachers based on a one-size-fits-all points system." And they were "not individualized determinations based on the student's needs." Further, conditioning students' access to general education on their success on a point system meant that their time inside and outside general education varied day-to-day and didn't consistently match what was in their IEPs, OCR wrote.

The district took immediate action to resolve the complaint. ■

### Relying on parents to place child where IEP can be implemented discriminates

**Case name:** *The Green Inspiration Acad. (OH)*, 124 LRP 43287 (OCR 04/01/24).

**Ruling:** The Office for Civil Rights expressed concerns that an Ohio district may have discriminated against a student with an undisclosed disability in violation of ADA Title II and Section 504. The district may have failed to offer the student necessary services and supports identified in his IEP, denying him FAPE, OCR explained. To resolve OCR's concerns, the district agreed to invite the student, and other students similarly treated, to reenroll.



**What it means:** A district must place a student where his IEP or 504 plan can be implemented, or else it unlawfully discriminates. This district relied on the parents to place a student where his IEP could be implemented. But when the IEP team determined that the student's needs could not be met in his current placement, it should have placed him where they could be, rather than putting the onus on the parents. Further, better communication that aligns with prior written notice could eliminate any confusion or misunderstanding that might prompt parents to unnecessarily unilaterally place their child at their own expense.

**Summary:** An Ohio district's reliance on the parents of a student with an undisclosed disability to place him where his IEP could be implemented may have discriminated based on disability. The district's failure to offer the student the services and supports identified in his IEP may have denied him FAPE. The district committed to resolving OCR's concerns.

The district informed the parents that it couldn't accommodate the student and recommended several outside resources offering the services listed in his IEP. The PWN stated that the student's IEP team "determined that to meet his educational needs, he would need extensive services beyond what we can provide."

The parent contacted OCR alleging that the district denied the student enrollment due to his disability.

The district asserted that it "just provided a list of other schools as an option and choice;" it was the parent's decision to unilaterally place him. It acknowledged that it did not consider sending the student to another school to receive services at district expense.

ADA Title II and Section 504 require districts to provide students with disabilities FAPE by way of regular or special education designed to meet their individual needs as adequately as the needs of non-disabled students are met, OCR explained.

The district's communications with the parents raised compliance concerns, OCR remarked. Specifically, the IEP team made clear that he would best be served by a specific placement, but it didn't make any attempt to arrange for that placement, OCR explained. That was most clearly documented in PWN, it pointed out. The parents reasonably construed that to mean that the school wouldn't provide the student with the services he needed had he stayed there, OCR reasoned. That would constitute a denial of FAPE, it determined. Instead of placing the student at a school that could serve his needs, the district provided the parents with a list of other schools he could attend, OCR observed. ■



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