

Section 504 COMPLIANCE ADVISOR

ROUTE TO	

Your Guide to Understanding and Administering Section 504

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Section 504 accommodations should match, not exceed, student needs

If Goldilocks had needed a Section 504 plan, she may have struggled to find one that was “just right.”

This is because many Section 504 teams write accommodations too broadly, providing more than is required.

“Teams need to stay focused on the point of the accommodation,” said Michelle A. Todd, an attorney at Hodges, Loizzi, Eisenhammer, Rodick, and Kohn LLP in Itasca, Ill. Ask, “Are we doing more than just leveling the playing field? Are we giving the student an unfair advantage?” Maximizing students’ performance isn’t going to be beneficial for the long-term.”

In *H.D. v. Kennett Consolidated School District*, 75 IDELR 94 (E.D. Pa. 2019), for example, the court explained that to provide FAPE, a district must offer reasonable accommodations that meet a student’s needs and ensure his meaningful participation in school activities.

With the steps below, Section 504 teams can narrow down accommodations so that they provide right-sized support for students and lend themselves to easy monitoring.

Be specific

Avoid using phrases such as “as needed” or “as practicable,” because they can lead to implementation that is too broad, Todd said. For example, having extended time “as needed” for a student with ADHD may lead him to receive it in subjects where he doesn’t require it. “A student with ADHD may only need extended time in a certain non-preferred subject, like math,” she said. “The need may not necessarily extend to other academic subjects. Teams should write specific accommodations for each of the core academic subjects.”

In another example, if the student with ADHD needs modified assignments, don’t just put into the Section 504 plan that he needs “modified work,” Todd said. The student may need reduced work in class, but not at home. Also specify whether that applies to all subjects. You can’t say a student will complete half the problems in assignments, since that won’t carry over from math into English/language arts, where there are no problems. Make sure the language offers specificity and context. For example, write: “Provide student with 50 percent additional time on quizzes and tests in his non-preferred subject of math.”

(See **MATCH** on page 3)

Can Ariz. charter school hold 504 meeting with just 2 participants?

An Arizona charter school convened a virtual Section 504 meeting to update a student's accommodation plan. Its Section 504 coordinator invited the parent and one of the student's four teachers to the meeting. The teacher signed on 16 minutes late due to technical difficulties and left shortly thereafter to teach a class. Following the teacher's departure, the parent and the Section 504 coordinator updated the student's 504 plan.

The parent believed that the two-person meeting violated Section 504's placement procedures. The charter school pointed out that it invited one of the student's teachers to the meeting — a practice it followed for all students with Section 504 plans. It further noted that the parent and the Section 504 coordinator discussed the student's areas of need before deciding on accommodations.

A local educational agency must ensure that placement decisions are made by a group of persons that includes persons knowledgeable about the student, the meaning of evaluative data, and the placement options. 34 CFR 104.35(c).

Did the parent establish a Section 504 violation?

A. No. The Section 504 coordinator satisfied the "group" requirement by inviting the parent and the student's teacher to the meeting.

B. Yes. The parent and the Section 504 coordinator needed other individuals' input to develop an appropriate plan.

C. Yes. Section 504 teams must include at least eight individuals to qualify as a "group of persons."

How OCR ruled: B.

The school failed to ensure that a group of persons decided which accommodations the student

required to receive FAPE. *Arizona State Univ. (AZ) Preparatory Acad.*, 124 LRP 1765 (OCR 08/02/23).

OCR recognized that the school invited one of the student's teachers to participate in the meeting along with the parent and the Section 504 coordinator. However, OCR noted that the teacher did not attend the meeting long enough to participate in discussions about the student's needs. OCR explained that Section 504 did not allow the parent and the Section 504 coordinator to update the student's plan by themselves.

"Two people is insufficient to constitute a 'group of persons knowledgeable' about the student and his accommodation needs," OCR wrote.

Furthermore, OCR pointed out that the student likely had different needs in different classes. Even if the teacher had attended the entire meeting, OCR observed, she could not have provided a complete picture of the student's needs. OCR determined that the school violated Section 504 by failing to invite all of the student's teachers and ensuring that at least some of them participated in the team meeting.

A is incorrect. Even if the teacher had attended the entire meeting, the team would have required information from other staff to get a complete picture of the student's needs.

C is incorrect. Section 504 does not identify mandatory team members or require a specific number of individuals to participate in team meetings.

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

SECTION 504 COMPLIANCE ADVISOR

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MATCH (continued from page 1)

Plan for appropriate implementation

Teachers who will be expected to implement specific accommodations should contribute to the Section 504 meeting as best practice, Todd said. Invite teachers to the meeting or at least see them after the meeting to discuss accommodation implementation. "If teachers are not involved, there will be no buy-in," she said.

Once the team is confident that accommodations are written with enough specificity, discuss how teachers and other staff members will monitor students' progress in using their accommodations, Todd said. A teacher can simply list student names as rows and all anticipated accommodations as columns, then put tally marks under each accommodation whenever used by a student. She can also mark down when a student refuses an accommodation. "This can even be done on a calendar," she said. "That might be easier for a teacher." ■

Don't shortchange nurse role in 504 process

School nurses wear several hats daily. They are constantly swamped with aiding students, maintaining their records, and more.

"I've loved being a school nurse. It's very challenging and very rewarding at the same time," said Elizabeth Clark, a nursing education and practice specialist at the National Association of School Nurses and former elementary school nurse.

School nurses serve as the backbone of a child's health care during school hours, and school nursing services must be provided to students when needed to receive FAPE, as indicated in the child's Section 504 plan. 71 Fed. Reg. 46,574 (2006).

With that in mind, remember the important role school nurses play in creating students' 504 plans. Make sure they can fully share their expertise in 504 meetings and have enough time to formulate accommodations for students. Clark's advice below helps districts effectively support school nurses' role in the 504 process.

Ensure school nurse attends 504 meeting

"The school nurse is the health expert," said Clark. Nurses see students with a variety of health conditions, injuries, or disabilities that range in severity, she said. Therefore, nurses bring value to the table by providing input on a student's health condition and its effects on academic performance. Clark said school nurses also complete relevant paperwork that they can bring to 504 meetings to advocate for a student's need.

"Sometimes the barrier is that a school nurse is not invited to the 504 meeting," said Clark. Teams may forget to include nurses because they are occupied by students who need care. "It is essential that the school nurse is included to help identify potential accommodations for a child," she said.

Fully incorporate nurse's expertise

"School nurses are the bridge between education and health care," said Clark. They also "develop individualized health care plans, health emergency plans, and health action plans so that students are safe and able to access their education," she said.

It's evident that school nurses carry a variety of knowledge and expertise, Clark added. "There are some schools and districts where the school nurse is the 504 coordinator." In this case, she said nurses receive additional training regarding the law and how to develop a 504 plan.

"It is not appropriate for a teacher or education staff to be making decisions about health and health care," Clark said. Although teachers may be familiar with common health conditions such as diabetes, severe allergies, or epilepsy, they are not health care experts, she said.

Allow nurse to assess, pick best accommodations

Fulfilling the child find obligation for students who may be eligible under Section 504 "absolutely starts with communication" among staff, Clark said. Students who have health concerns should be referred to the nurse, who can conduct a comprehensive assessment to determine the services the student needs.

Nurses investigate students' medical conditions to ensure they can provide quality care that enables classroom success, said Clark. This can be challenging, especially for children with unique genetic issues or complex needs. She said it's important that even amid their busy schedules, nurses receive ample time to research appropriate evidence-based accommodations for students. ■

Disability discrimination under Section 504

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 R M T A O U N U V T I T L E I I K N O E
 T Z I W R I F U A N Y F G A C R E G I T
 R T M J H C T P Q F E Q U G S M X G N I
 O I I B H A R A S S M E N T R V C Q E M
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 A U X I L I A R Y A I D S V M K K L E W
 X I Y T I N U T R O P P O L A U Q E S D

WORD LIST:

ABUSE	DIFFERENT	HOSTILE	MODIFICATION
ACCESSIBILITY	TREATMENT	ENVIRONMENT	OCR
ACCOMMODATE	EFFECTIVE AID	IMPAIRMENT	PERPETUATE
AUXILIARY AIDS	EQUAL	INFERIOR	SEGREGATE
BULLYING	OPPORTUNITY	TREATMENT	TITLE II
	EXCLUSION	INTIMIDATION	
	HARASSMENT	LIMIT ENJOYMENT	

No musical chairs: Make sure preferential seating is clear in Section 504 plan

A student with ADHD may regularly peek out the window during math and miss tips his teacher gives about impending assignments. He may require a seating arrangement specified in his Section 504 plan to ensure he can access learning.

But simply putting “preferential seating” into his plan may cause more problems than it solves if another teacher puts him close to her desk near a window. The plan needs more detail to avoid inappropriate implementation.

“504 teams should not add ‘preferential seating’ into a student’s 504 plan without first having a discussion about why the student requires that accommodation and what type of preferential seating the student actually requires,” said Lori M. Purvis, an attorney at Sands Anderson PC in Richmond, Va. “I often see this accommodation included in 504 plans without any additional details regarding what ‘preferential’ means for that specific student. Saying ‘preferential seating’ alone doesn’t give anyone reading the plan enough information to understand how to effectively implement the accommodation, as it does not provide any information about what type of seating the student requires.”

To prevent poor implementation, Section 504 team members should examine what they need to specify in plans regarding preferential seating. They should also recognize when to involve students in discussions about the accommodation. Pull up a chair and review the tricks below to ensure 504 plans appropriately describe preferential seating.

Get detailed

Instead of simply stating “preferential seating” in a student’s 504 plan, teams should provide details about how to implement the accommodation, Purvis said. For example, if a student has a vision impairment and requires seating close to the point of instruction, the team should include that information in the plan. If the student has behavioral concerns, the team can specify that she needs to be seated close to the teacher so her behavior can be managed. “If there is not enough detail included in the 504 plan, that’s when we

see the accommodation being implemented differently across the school day in different classrooms,” she said. “The phrase ‘preferential seating’ alone does not provide teachers with enough information.”

The type of seating a student requires will depend on her individualized needs, Purvis said. For example, if a student is easily distracted by people walking by, a 504 team may determine that the student needs to be seated away from windows, hallways, or the outside. If a student is distracted by sitting close to peers, the 504 team may recommend that the student requires seating that provides her with more space.

A student may not require preferential seating in every classroom, Purvis said. For example, a student with a vision impairment may need to be close to the point of instruction in academic classes but may not require preferential seating in physical education or other resource classes. The 504 plan should provide sufficient detail to ensure that staff grasp where, when, and how the accommodation needs to be provided.

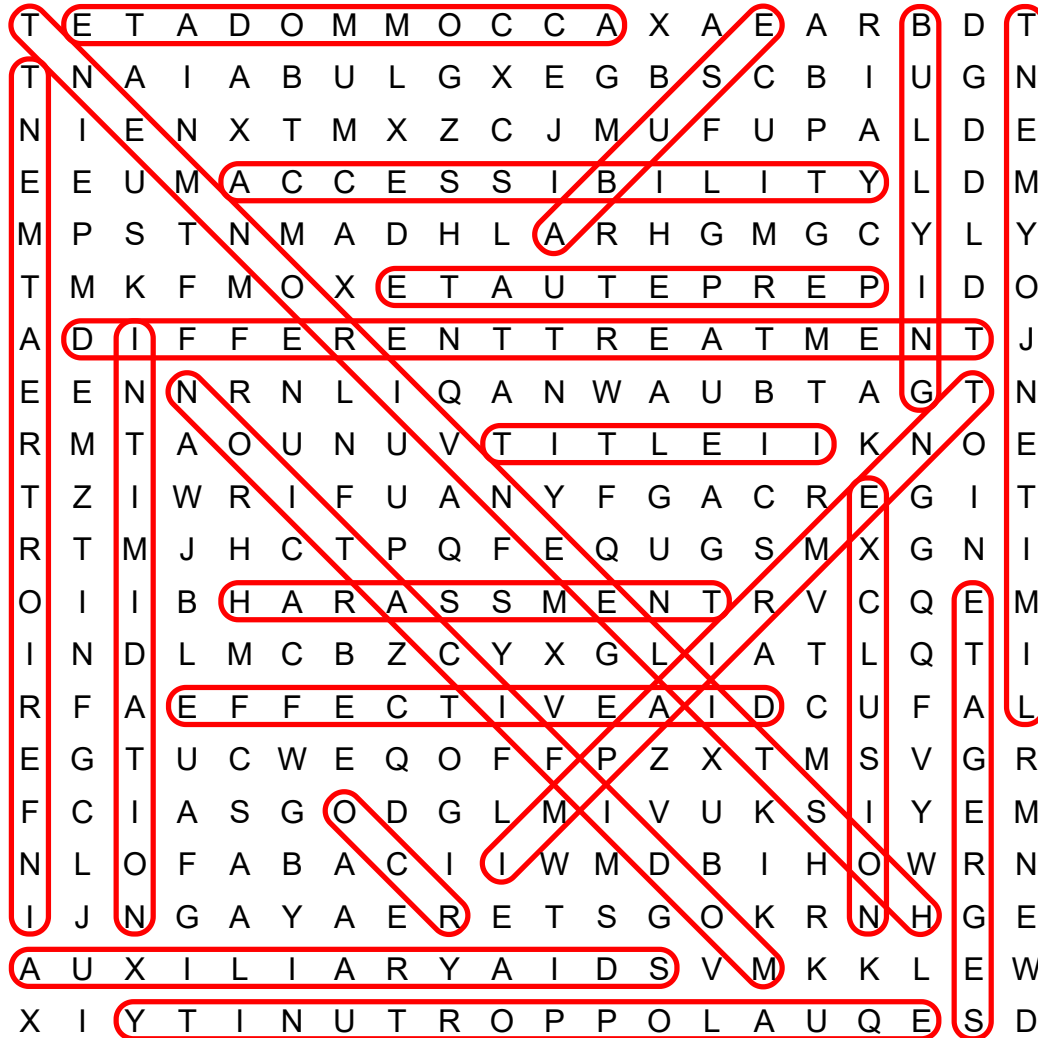
Individualize

What you write in the 504 plan must be individualized, regardless of whether other students in the classroom require similar accommodations, Purvis said. “Multiple students in one classroom may require a similar accommodation, such as preferential seating close to the point of instruction,” she said. “I would caution 504 teams against focusing on the accommodations other students are provided when determining what accommodations an individual student requires. It should be an individualized consideration.”

Involve student

When appropriate, include students in 504 team meetings to provide input regarding what accommodations, including preferential seating, they may require and how those accommodations will look day-to-day, Purvis said. Section 504 teams can always reconvene if they determine that an accommodation is no longer appropriate or if a student refuses to use an accommodation. ■

Disability discrimination under Section 504



WORD LIST:

ABUSE	DIFFERENT	HOSTILE	MODIFICATION
ACCESSIBILITY	TREATMENT	ENVIRONMENT	OCR
ACCOMMODATE	EFFECTIVE AID	IMPAIRMENT	PERPETUATE
AUXILIARY AIDS	EQUAL	INFERIOR	SEGREGATE
BULLYING	OPPORTUNITY	TREATMENT	TITLE II
	EXCLUSION	INTIMIDATION	
	HARASSMENT	LIMIT ENJOYMENT	

Support, don't judge when student with premenstrual dysphoric disorder seeks 504 plan

If the mood swings don't cause a young woman to lash out in class, the fatigue may cause her to withdraw from learning completely. She may exhibit irritability, anxiety, and hopelessness. She may also have trouble concentrating and experience severe physical pain, according to Johns Hopkins Medicine.

These are issues that students with premenstrual dysphoric disorder often experience. It is essentially an extreme form of premenstrual syndrome that can be even more debilitating and emotionally draining. It is not a condition that should be dismissed in school.

While Section 504 doesn't specifically address the disorder, the ADA Amendments Act provides that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. 42 USC 12102(4)(D); and 28 CFR 35.108(d)(1)(iv).

"It's an ongoing condition and is attached to hormonal changes in the body," said Anne Bradley, founder of Strategies and Solutions Group in Kansas City, Mo. "With the definition of disability in the current law, it is clear that it's absolutely covered."

Section 504 teams shouldn't overlook the needs of students with premenstrual dysphoric disorder. They should review appropriate accommodations and behavioral interventions to include in students' 504 plans. This may prevent child find violations and claims that they denied students FAPE. Pick up the tips below to effectively address the needs of students with premenstrual dysphoric disorder.

Explore triggers. A student may exhibit irritability and other issues a couple of weeks before her period each month and lash out at peers and others around her, Bradley said. It may be appropriate to conduct a functional behavioral assessment and develop a behavioral intervention plan to determine triggers and interventions for the student's aggression if it is severe. Invite the student to her 504 meeting to discuss what she thinks sets off her emotions and prompts her to start fights. She may share that she becomes impatient if she has to wade through peers to get to her locker in the busy hallway or wait a long time in line to use the bathroom before the bell rings. Just ensure the meeting is judgment-free.

"There's a lot of stigma around issues that are episodic and that seem to come and go, and 504 teams need to be careful about listening to the way it impacts the student," she said.

Offer accommodations. A student may feel depressed, hopeless, and overwhelmed physically and mentally, Bradley said. She may be self-critical. Weigh various accommodations to help the student continue to access her education. These may include:

- Providing breaks to see the school nurse, taking anti-inflammatories, or relaxing in a quiet room.
- Allowing the student to leave the classroom a few minutes early to avoid overstimulation and anxiety during unstructured transitions.
- Seating the student away from others who trigger her discomfort or irritation.
- Monitoring the student's amount of coursework and allowing the student to have an extra day or two to complete work.

"Be flexible, with the understanding that sometimes the pain is so severe — and feelings of hopelessness, irritability, and overwhelm so pervasive — that getting their work done in a timely manner is not possible," she said.

Promote understanding. It's important for everyone on the team to understand that this condition can be devastating and lead a student to engage in self-harm or have suicidal ideation, Bradley said. Make sure the 504 plan advises teachers and others to watch for signs of withdrawal and sadness to keep students safe. Staff members should not be focused just on teenagers. The onset of puberty is earlier and earlier in students, so elementary school teachers also need to be aware of this. ■

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Section 504 plan at a glance



Busy general educators may unintentionally neglect students' Section 504 plans. Substitute teachers may also forget to follow students' plans, endangering FAPE. For example, in *Boise (ID) School District*, 120 LRP 37040 (OCR 10/09/20), a district could have prevented an implementation failure by training the teacher to review students' 504 plans with a substitute. Sharing a summary with key information to follow may prevent missteps that result in a denial of FAPE.

Student name:

Teacher name:

Grade:

Class:

Disability: (For example, autism.)

What it looks like in school: (For example, student tenses up during transitions, student avoids eye contact.)

Accommodations

Instruction: (For example, repeat directions.)

Seating: (For example, near teacher.)

Breaks: (For example, movement break before every transition.)

Communication: (For example, check for understanding.)



Applicable medical information:

Related services: (For example, student receives pull-out speech services.)

Notes:

Contacts

Parent name:
Phone:
Email:

Coordinator name:
Phone:
Email:



Child's IDEA evaluations won't shield Pa. district from 504 child find claim

Case name: *B.S.M. v. Upper Darby Sch. Dist.*, 124 LRP 17147 (3d Cir. 06/04/24).

Ruling: A Pennsylvania district's timely evaluation of an elementary school student's need for IDEA services did not necessarily establish its compliance with Section 504's child find requirement. The 3d U.S. Circuit Court of Appeals vacated a District Court ruling at 82 IDELR 197 that treated the parents' IDEA and Section 504 claims as one and remanded the case for further proceedings.

What it means: Although the IDEA's child find requirement overlaps somewhat with a district's duty to evaluate under Section 504, they are two distinct obligations. Districts within the 3d Circuit should not expect an IDEA evaluation to satisfy their child find duties under both statutes. Here, the district pointed out that it found the student eligible for IDEA services when she was in kindergarten and provided speech and language therapy under an IEP for three years. However, its decision to wait another two years to evaluate the student's emotional difficulties, which included crying and suicidal ideation, raised questions about its Section 504 compliance.

Summary: Noting that the IDEA and Section 504 have different eligibility standards, the 3d Circuit rejected the notion that an IDEA evaluation satisfies a district's child find obligations under both statutes. The 3d Circuit vacated a District Court ruling in a Pennsylvania district's favor and remanded the case for further proceedings on the district's compliance with Section 504's child find requirement.

The 3d Circuit noted that the IDEA and Section 504 both require districts to identify, locate, and evaluate all resident school-age students suspected of having disabilities. However, the court pointed out that Section 504 defines "disability" more broadly than the IDEA. As such, the court explained, students who do not qualify for specialized instruction under the IDEA may still be entitled to services under Section 504.

The court observed that the district in this case evaluated the student's speech and language needs when she was in kindergarten. That evaluation prompted the district to find the student eligible for IDEA services and provide speech and language therapy under an IEP until April of her second-grade year. Still, the court noted that the IDEA evaluation did not necessarily meet the student's needs under Section 504.

The 3d Circuit pointed out that the district did not evaluate the student's emotional needs or develop a Section 504 plan to address her depression symptoms until her fourth-grade year. As such, the court

explained, the district's liability under Section 504 would turn on the reasonableness of that decision.

"There is significant debate about when the [district] was put on notice of [the student's] emotional struggles," U.S. Circuit Judge Thomas L. Ambro wrote. Rather than resolve that debate itself, the 3d Circuit directed the District Court to consider the issue on remand. The 3d Circuit did not review the District Court's conclusion that the district complied with the IDEA. ■

Barring nonverbal pupil's letter board stifles communication, stokes ADA claim

Case name: *Le Pape v. Lower Merion Sch. Dist.*, 124 LRP 17149 (3d Cir. 06/04/24).

Ruling: The 3d U.S. Circuit Court of Appeals held that a District Court failed to properly consider whether a Pennsylvania district denied effective communication to a former student with autism and a speech-language impairment. It reversed the District Court's dismissal of the parents' ADA intentional discrimination claim at 80 IDELR 36 and remanded the case for further proceedings.

What it means: An appropriate IEP may not always satisfy a district's legal obligations under the ADA Title II. If the auxiliary aids and services in the IEP offer FAPE but aren't enough to ensure effective communication, the district may still need to offer the student additional or different services. The district here should have considered training teachers to communicate with the student using a letter board. While the letter board wasn't necessary for FAPE, it may have enabled the student to effectively express his own thoughts and feelings and ultimately prevented the parents' intentional discrimination claim.

Summary: Although a Pennsylvania district didn't violate the IDEA when it allegedly barred a nonverbal student from speaking through a letter board, his parents may still be entitled to bring their discrimination claim to a jury. Noting that the district may have violated the student's right to effective communication, the 3d Circuit held that a District Court prematurely dismissed the parents' ADA claim at 80 IDELR 36.

Under the ADA, a district must ensure that its communication with a student with a disability is as effective as its communications with nondisabled students. To that end, the district "must give primary consideration" to the requests of the student unless it can demonstrate that another effective means of communication exists. Here, the 3d Circuit found that there was a question of material fact as to whether the district violated the ADA's effective communication mandate when it allegedly prohibited the student from using a letter board at school.

The 3d Circuit noted that the letter board was the student's preferred method of communication. Testimony from multiple experts indicated that the letter board was the only way for the student to express his own thoughts and feelings. While the district offered the student typing as an alternative, this may not have been an effective method of communication. The evidence suggested that the student could only type what he heard and not his own thoughts, the 3d Circuit observed.

Based on this, the District Court erred in determining that the parents' prior FAPE claims incorporated and precluded their ADA claim, the 3d Circuit opined. It acknowledged that a district is not required under the IDEA to implement parent preferences as long as the student receives an educational benefit. However, "the [ADA's] effective communication requirement imposes a greater obligation ... than does the [IDEA's] FAPE requirement," the 3d Circuit highlighted.

Because there was at least one factual dispute, the 3d Circuit reversed summary judgment in the district's favor and remanded the parents' ADA and Section 504 claims. It also clarified that ADA and Section 504 discrimination claims seeking compensatory damages should be resolved through summary judgment — and possibly trial — even if they are based on the same facts as a related FAPE claim. ■

Mom's success on minor 504 claim won't support \$451,688 fee award

Case name: *Spring v. Allegany-Limestone Cent. Sch. Dist.*, 124 LRP 19021 (W.D.N.Y. 06/10/24).

Ruling: A parent who partially prevailed on Section 504 and ADA Title II claims against a New York district could not recover \$451,688 for her attorneys' work on the decade-long case. Citing the attorneys' billing deficiencies and the parent's extremely limited success, the U.S. District Court, Western District of New York awarded just \$90,337 in fees and costs.

What it means: As with IDEA fee claims, courts considering fee claims under Section 504 and the ADA will consider the quantity and quality of the parent's success. A district may be able to reduce its liability for attorney's fees by showing that the relief ultimately obtained was relatively minor. This district pointed out that the jury denied relief on the parent's disability harassment claim and awarded only \$25,000 for the student's discriminatory removal from his school's baseball team. Its breakdown of the claims and the relief awarded helped persuade the court to reduce the parent's overall fee award by 80 percent.

Summary: A jury's finding that a New York district was not deliberately indifferent to peer harassment of a teenager with ADHD and Tourette syndrome prevented the parent from recovering \$451,688 in attorney's fees. Determining that the harassment claim was the core of the parent's Section 504 and ADA lawsuit, the District Court held that her limited success warranted an 80 percent across-the-board reduction.

U.S. District Judge John L. Sinatra Jr. noted that Section 504 and the ADA both allow courts to award reasonable attorney's fees to prevailing parties. In this case, the judge observed, the jury found that the district discriminated against the student by removing him from his school's baseball team for disability-related behaviors. Because the jury awarded the parent \$25,000 in damages on that claim, the judge found that the parent was a prevailing party.

However, Judge Sinatra explained that he also needed to consider the significance of that award against the total relief the parent sought. He pointed out that the parent's lawsuit centered on the district's allegedly inadequate response to disability-based harassment, which the parent blamed for her son's June 2013 suicide. "The jury found in [the parent's

504 quick quiz

Q: Must district provide every accommodation listed in student's Section 504 plan?

A: Yes. Educators do not get to pick and choose which parts of a student's Section 504 plan they will implement. If the student's Section 504 team determines that a particular accommodation is necessary for FAPE, then district staff must provide that accommodation. See, e.g., *Liberty Hill (TX) Indep. Sch. Dist.*, 123 LRP 32241 (OCR 06/20/23) (expressing concerns about an email in which an assistant principal told school staff that a student's Section 504 accommodations "should be used sparingly").

Districts can improve the likelihood of compliance by informing relevant staff about their implementation responsibilities and encouraging staff to document the accommodations they provide. See, e.g., *Waverly/South Shore (SD) Sch.*, 82 IDELR 119 (OCR 2022) (noting that a South Dakota district's superintendent ordered a teacher to provide the end-of-day check-ins required by a student's Section 504 plan); and *Washington (OH) Local Sch. Dist.*, 121 LRP 25583 (OCR 03/02/21) (citing a teacher's use of checklists as evidence that an Ohio district implemented a student's Section 504 plan).

If a district suspects that an accommodation listed in a student's Section 504 plan is no longer appropriate, it should reconvene the student's Section 504 team to discuss that accommodation.

favor] only on the claims arising out of the baseball incident, which was a much smaller focus of the trial,” the judge wrote.

Judge Sinatra also identified numerous deficiencies in the parent attorneys’ billing records, including vague time entries and questionable charges for travel time. Given those issues and the parent’s limited success, the judge determined that an overall reduction of 80 percent was appropriate. The court ordered the district to pay the parent \$90,337 in attorney’s fees and costs. ■

Okla. district fails to evaluate child, develops 504 based on dad’s statements

Case name: *Owasso (OK) Pub. Schs.*, 124 LRP 5171 (OCR 09/15/23).

Ruling: The Office for Civil Rights expressed concerns that an Oklahoma district may have failed to evaluate an elementary school student with an undisclosed disability in violation of ADA Title II and Section 504. The district signed a voluntary resolution agreement promising to obtain consent to evaluate, conduct a 504 evaluation, place the child, and develop an appropriate 504 plan, if necessary. OCR will monitor the district’s implementation of the agreement.

What it means: Section 504 requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. As this district found out, relying on a parent’s comments and failing to record any other sources it relied on to formulate a 504 plan can lead to discrimination claims.

Summary: An Oklahoma district may have failed to evaluate a grade-schooler with an undisclosed disability and created a 504 plan based solely on information from his father. After an OCR investigation, the district agreed to evaluate the child and develop a new 504 plan, if necessary.

The mother asserted that the child’s 504 plan identified an incorrect diagnosis and was based solely on his father’s statements. She shared that the child had an undisclosed disability and alleged that the district failed to evaluate despite data indicating a disability.

ADA Title II and Section 504 prohibit discrimination based on disability, OCR explained. A district must evaluate any student who needs or is believed to need special education or related services due to a disability, it added. And a district must periodically reevaluate when the student’s educational program isn’t meeting his individual needs, as evinced by a significant decline in grades or behavior, for example, OCR noted.

OCR pointed out that the district didn’t record what sources, if any, it relied upon in formulating the child’s 504 plan or which district staff participated in its formation.

OCR raised concerns as to whether the district should have evaluated the child. Because there was information suggesting the child’s educational program wasn’t meeting his individual needs, a group of knowledgeable persons should have considered whether further evaluation or revisions to his 504 plan or placement were necessary, OCR explained.

The district voluntarily entered into an agreement to address the concerns raised. And OCR noted that, absent a court order, one parent could consent to evaluate. ■

Highly subjective attendance policy discriminates based on teen’s POTS

Case name: *North Penn Sch. Dist.*, 124 LRP 5272 (SEA PA 01/05/24).

Ruling: An impartial hearing officer found that a Pennsylvania district unlawfully discriminated against a high schooler based on the teen’s postural orthostatic tachycardia syndrome in violation of ADA Title II and Section 504. The IHO required the district to rescind threats of criminal prosecution for truancy, remove threatening letters from the teen’s educational record, and have the IEP team address any future attendance issues. The IHO also concluded that the district did not deny the student FAPE in violation of the IDEA.

What it means: A district policy that isn’t applied evenhandedly to students with and without disabilities unlawfully discriminates and results in disparate treatment. And the use of a highly subjective policy or practice lends itself to potential discrimination. Here, school officials had a lot of flexibility and discretion when applying and enforcing the district’s attendance policy, which resulted in treating truant students with disabilities differently than nondisabled students who were truant. This district went too far when it failed to excuse the teen’s absences that doctors linked to disability and threatened criminal truancy proceedings rather than addressing attendance issues in an IEP meeting.

Summary: A Pennsylvania district’s attendance policy, as applied to a high school student with an other health impairment and postural orthostatic tachycardia syndrome, discriminated based on disability. The district will rescind letters threatening criminal prosecution for truancy and handle attendance issues by the IEP team going forward.

The teen missed 68 days during one school year and 123 days the following year. The teen's treating physicians requested a modified school program and accommodations for lateness, absences, and early dismissals due to the teen's POTS and migraines. The district sent multiple "Notice[s] of Child's Illegal Absences" to the parents threatening criminal prosecution and other sanctions.

The parents alleged that the application of the district's attendance policy discriminated against the teen based on disability.

ADA Title II and Section 504 prohibit discrimination based on disability, the IHO explained. District must provide education services designed to meet the individual needs of students with disabilities as adequately as it meets the needs of nondisabled students, he added.

The district treated the teen's absences as unexcused without explanation despite receiving medical documentation linking the teen's disability to attendance issues, the IHO observed.

Also, the attendance policy was highly subjective and wasn't applied consistently, he determined. School officials had great flexibility and discretion in applying and enforcing it, including when to excuse student absences. It took many undefined circumstances into account, the IHO remarked.

Moreover, the policy didn't have a provision to notify the IEP team when a student with a disability was truant, he pointed out. And, absences caused by disability weren't excused, nor did the IEP team handle the problem, the IHO noted.

The parents proved disability discrimination; the threats of criminal court proceedings, coupled with the flexible and subjective application of the attendance policy, constituted discrimination, he concluded. The policy wasn't evenhandedly applied when a truant student had a disability and resulted in disparate treatment, the IHO found. ■

School safety concerns don't merit 504 referral amid good grades, behavior

Case name: *Jasper County (SC) Sch. Dist.*, 123 LRP 34365 (OCR 10/17/22)

Ruling: The Office for Civil Rights found no evidence that a South Carolina district failed to evaluate a student with an alleged disability. It also determined that the district did not improperly unenroll or retaliate against the student. Finding no Section 504 or Title II violation, OCR closed the mother's disability discrimination complaint.

What it means: Not every concern from a parent will merit an evaluation under Section 504. Although a district has an affirmative child find duty, it need not refer a student for an evaluation

if there is no reason for the district to suspect a disability. After a safety threat occurred on campus, this mother requested a Section 504 evaluation and inquired about other schooling options, such as online or virtual courses. By highlighting that the student received passing grades and had no disciplinary referrals, the district demonstrated it had no reason to suspect he had a disability warranting an evaluation.

Summary: A mother may have been concerned about her son after a school safety incident, but her worries didn't give a South Carolina district reason to suspect a disability. Because the student had no academic or behavioral problems, OCR concluded that the district did not violate Section 504 or Title II by declining to refer him for an evaluation.

Under Section 504 and Title II, a district has an affirmative duty to locate, identify, and evaluate all students who need or may need special education or related services due to a disability. The district did not violate this child find duty, OCR determined.

During the school year, OCR noted that the student's classmate caused a threat to school safety. After the incident, the mother allegedly stopped sending her son to school and requested that the district implement additional safety measures, including clear book bags and metal detectors. She then allegedly met with school staff to request an evaluation. Although the district never evaluated the student's eligibility for a Section 504 plan, OCR concluded that no child find violation occurred.

According to records, the student had no disciplinary referrals during the school year. He also had passing grades and no attendance issues "beyond the [mother's] refusal to send him to the School as a result of the [safety] incident," OCR highlighted. The district had no reason to suspect the student had a disability, OCR opined.

OCR also rejected the mother's claim that the district disenrolled the student when she requested other school options, such as online or virtual school or homeschooling. Testimony from multiple staffers indicated that the mother voluntarily sought to withdraw the student and that the principal provided her with unenrollment forms at her request.

Finding that the district did not violate its child find duty or discriminate against the student, OCR closed the mother's complaint. ■

Faulty info about pupil's limited class options doesn't add up to discrimination

Case name: *School Dist. of Manatee County (FL)*, 124 LRP 13674 (OCR 11/28/22).

Ruling: The Office for Civil Rights concluded that a Florida district did not discriminate against students with disabilities by allegedly excluding them from certain classes. It closed the Section 504 and Title II complaint filed by the parent of a student with an undisclosed disability, concluding that no discrimination occurred.

What it means: Even if a district takes steps to ensure all students with disabilities are treated equally, a miscommunication can lead to allegations of discrimination. For this reason, a district should periodically review its Section 504 and Title II policies and procedures with all staffers, especially those who work closely with students' families. Several IEP team members allegedly told a parent that her daughter couldn't participate in certain classes due to her disability. Although this district didn't engage in discrimination, appropriate training may have prevented educators from relaying incorrect information about the student's potential course options that sparked the parent's OCR complaint.

Summary: Records showing that students with disabilities participated in consumer, homemaking, and career and technical classes undermined a parent's claim that a Florida district engaged in disability discrimination. Finding no evidence that the district treated students with disabilities differently than nondisabled students, OCR closed the parent's Section 504 and Title II complaint.

Under Section 504 and Title II, a district must ensure that students with disabilities have an equal

opportunity to participate in and benefit from its programs, services, and activities. OCR found insufficient evidence that the district violated this requirement.

The parent alleged that during an IEP meeting, school staff informed her that special education students, including her daughter, are not permitted to participate in certain classes available to general education students. She contended that two other staffers confirmed that special education students were not permitted to participate in courses such as consumer, homemaking, and career and technical education courses.

During its investigation, OCR reviewed a random sampling of class schedules pertaining to children with disabilities from multiple schools across the district. It determined that most children in the sampling, including those attending the student's school, were enrolled in at least one of the classes. OCR also found that students with IEPs and Section 504 plans alike were able to participate in the classes that were the subject of the investigation. Moreover, the district's policies stated that students with disabilities were entitled to the same variety of educational programs and services that were available to nondisabled students.

Because there was no evidence that the district treated students with disabilities differently, OCR concluded that no discrimination occurred. It closed the parent's complaint without ordering remedial action. ■

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