Section
504 COMPLIANCE ADVISOR

ROUTE TO

Your Guide to Understanding and Administering Section 504

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IN THIS ISSUE

School nurse input a must for fulfilling child find obligations

School nurses are essential when it comes to providing health care for students; however, their jobs don't end there. School nurses also help refer students who may have disabilities when evaluation for a Section 504 plan is needed.

Child find is the obligation to identify, locate, and evaluate students with disabilities for special education and related services. 34 CFR 300.111(a)(1)(i).

"I think the school nurse's responsibility in child find is pretty expansive," said Louise Wilson, president of the National Association of State School Nurse Consultants and former school nurse from Madison, Wis.

School nurses play a vital role in complying with a district's child find obligation. They refer students for evaluation and help ensure student needs are met. Dig deeper into school nurses' child find responsibilities using Wilson's insights below.

Make evaluation referrals

Wilson said districts must involve school nurses in meeting child find obligations under Section 504. She explained that "the school nurse has knowledge of both the health condition and education," which allows her to advocate for students from both medical and educational standpoints.

"You don't have a 504 plan unless the student has a physical or mental disability," Wilson said. And because school nurses may be the only professionals in the district who are considered experts in physical health, Wilson said they are highly qualified to assess and identify students with disabilities.

If a school nurse assesses the student and must develop an individual health plan or emergency action plan, the student "probably has a significant health need," said Wilson. IHPs and emergency action documents tend to trigger child find obligation, she noted. "Notify your administration and 504 coordinator that this is a child we should probably do an evaluation for."

Advocate for all eligible students

Nurses should carefully review guidance documents from the U.S. Department of Education Office for Civil Rights — such as those related to diabetes, asthma, food allergies, and GERD, Wilson said. These resources

(See **NURSE** on page 3)

Did district discriminate by not funding online boot camp for 21-year-old?

The IEP of a 21-year-old with autism placed him in a full inclusion, independent adult transition program on a college campus, with speech language services. His progress and success in the program was "overwhelming," and he made "substantial progression," not "substantial regression" with all IEP skills.

For the summer, the district offered one month of daily speech language services, which the student declined. Eventually, "in the spirit of collaboration," the district agreed, and documented in the IEP, that it would fund services for transition skills at a five-day online boot camp offered by a local college. The student would complete the application process.

The student wasn't accepted into the summer program. The parent alleged that the district discriminated when it failed to provide the agreed-upon ESY services or with a comparable alternative upon the student's rejection.

To establish discrimination in violation of ADA Title II and Section 504, the parent must show that the student qualified with a disability, was eligible to participate in the public school program, and the district discriminated based on disability.

Did Mass. district deny adult student FAPE by failing to provide agreed-upon ESY services?

A. Yes. The agreement to fund ESY services was binding on the district and didn't involve other conditions, such as acceptance in the program.

B. Yes. The student didn't receive the required transition services.

C. No. The transition program wasn't part of the ESY program provided for in the student's IEP.

How the independent hearing officer found: C.

In *Springfield Public Schools*, 124 LRP 3054 (SEA MA 01/25/24), a hearing officer found that the parent did not prove discrimination. The district did not deny the student FAPE or discriminate based on disability, she added, because the transition program wasn't part of ESY services in the IEP.

Because the student wasn't accepted into the program, the district wasn't bound to fund it, the IHO found.

Moreover, the specific program wasn't part of the ESY program outlined in the IEP. The IEP, she explained, indicated that ESY services were intended to address the student's communication skills regression and that only speech language services were required.

The district agreed to fund the online boot camp, but the parent didn't notify the district of the student's rejection until the end of summer, the IHO pointed out.

A is incorrect. Acceptance to the program was a typical, reasonable, common-sense expectation and pre-requisite for the district to incur any obligation with regard to the summer program, the IHO reasoned. Since the student wasn't accepted into the program, the district wasn't bound to fund it.

B is incorrect. The student's transition skills were wholly provided within the adult transition program, and "he got the services he was owed," the IHO agreed. Moreover, the summer college boot camp was a transition skill-building program, not a communication skill-building one. There was no evidence that he needed support with transition skills through an ESY program due to loss of such skills during breaks in learning.

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

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NURSE (continued from page 1)

can help districts meet child find obligations and ensure students receive their protections. School nurses often "have to kind of argue with a school district and say, 'We should really add some 504 protections for the student with diabetes [or another condition],'" Wilson said. "The school nurse can be an advocate for those types of students."

Additionally, the guidance documents explain to teachers and 504 team members "how that particular health condition impacts [a student]," said Wilson. Consider a child who is hypoglycemic and misses a lot of educational opportunities due to frequent visits to the school nurse. Wilson said the documents serve as a great resource for nurses who "don't always know how to describe that."

"I always talk about school nurses being translators," Wilson said. For example, a school nurse would understand that coming to school late because of a health condition such as asthma might result in a student missing a sixth-grade math class. The nurse can determine "what is medically necessary and what is educationally necessary" when it comes to access to education and afterschool activities, said Wilson. ■

Recognize preventable 504 team failures for students with mood disorders

Visualize a high school student experiencing manic and depressive episodes. His bipolar disorder decreases his academic performance, and the 504 team convenes to provide a 504 plan with accommodations. The 504 team monitors his performance and sees no change. Did the team develop an appropriate, individualized 504 plan? Is the student receiving appropriate accommodations?

Bipolar disorder and disruptive mood dysregulation disorder are "that cycle between a depressive cycle and a more manic cycle," said Jamie King, supervisor of school psychology and 504 coordinator for Duval County Public Schools in Florida.

It's important for team members to remember that a 504 plan should not use a "one size fits all" approach. Teams should ultimately provide individualized accommodations that enable students with mood disorders to receive FAPE. Review common mistakes and solutions for creating effective 504 plans for students with mood disorders.

Mistake 1: Ignoring child find mandate

Educators fail to share with the 504 team concerns they may have over a student's academic success, said King. School teams must legally fulfill child find obligations "to make sure [they are] identifying what students need to access their education and to benefit from that instruction," she said.

Solution

If educators are concerned about a student, they must refer her to the 504 team for evaluation, King said. The evaluation could uncover needs for specialized accommodations, "wraparound services," and support from the school psychologist to connect the family to community resources. If student needs cannot be met with a 504 plan, the student may be eligible for special education services under the IDEA, said King.

Be sure to regularly train staff on 504 child find obligations.

Mistake 2: Picking generic accommodations

Many 504 teams will add standard accommodations to a student's 504 plan rather than specialized accommodations more applicable to a student with a mood disorder, King said. Yet these "canned accommodations" may miss the mark.

Solution

"Anytime we're creating a 504 plan, we want to make sure we're addressing what is specifically the barrier for that individual student," said King. 504 teams should carefully consider a student's needs based on academic struggles. For example, King said team members can ask themselves: Does the student have an identified person he can go to in times of need to help regulate emotions? Does the student need extra breaks during the day to accommodate mood shifts? Does the student need preferential seating in the front to avoid distractions?

Consider using a form or checklist to discuss accommodations for a particular student.

Mistake 3: Neglecting implementation

"Implementation is always the hardest part," King said. "It's easy for us to sit down and say, 'What does the student need? What's going to benefit the student?'. However, it takes effort to determine how the 504 will be carried out."

Solution

"Implementation does take collaboration with teachers," said King. It's important to receive feedback from all teachers supporting the student with a mood disorder to "understand how a student might need support in different classes," she said.

Mistake 4: Forgetting student input

504 teams often neglect to seek input from the student with a mood disorder when it comes to the creation of the 504 plan. King said students who are 13 years or older can attend the 504 meeting and provide input.

Solution

"It's important that the student is included in developing the [504] plan," King said. This allows her to provide input on desired accommodations that will be genuinely helpful.

"We don't want to develop accommodations that students do not want to use," said King. She added that it is important for the student to be present in meetings to understand accommodations provided and determine how and when to advocate for themselves.

Mistake 5: Skipping reevaluation

504 teams may not reevaluate a student as often as they should with the right 504 team members, she said. Federal law requires that 504 teams reevaluate a student but does not specify the frequency. 34 CFR 100.35(d). Districts should reevaluate when there is reason to believe the student's special education and related services needs have changed or when a district seeks to subject a student to a significant change in placement.

Solution

King said that 504 teams should follow the IDEA timeline for reevaluation, which is every three years. 34 CFR 300.303(b)(2). Teams should also reevaluate after a student matriculates or once a year at least "to review to make sure that everything is appropriate."

Additionally, 504 team members should consist of parents, educators, 504 coordinator and the student, if possible, said King. "The law says that it needs to be a group of individuals knowledgeable of the student." ■

These 4 misguided statements complicate 504 evaluations

Early in the school year, it's essential that all school staff understand how to handle Section 504 referrals for evaluation.

Section 504 requires districts to provide accommodations and supports to eligible students to ensure their equal access to education. 34 CFR 104.33. However, the process of building a student's 504 plan can be fraught with potential missteps, especially when staff are misinformed. Comprehensive staff training should identify district and building Section 504 contacts, emphasize the child find mandate, and explain how an effective referral process facilitates necessary student evaluations.

Make sure staff know to refrain from making legally risky statements that hinder 504 evaluations, said Betsey Helfrich, an attorney at The Law Office of Betsey Helfrich in Washington, Mo. "A lot of times [evaluation referrals] are not coming to the 504 coordinator; they're coming to a teacher, nurse, or principal," she said. "Everyone in those positions needs to know how to respond to get it in the hands of the right person."

Don't let uninformed or dismissive staff derail your district's 504 child find obligations. Before school starts, thoroughly equip staff to say the right thing to families and facilitate a compliant 504 referral and evaluation process. Below, Helfrich explains how to stop four common misstatements in their tracks.

Misstatement 1: "We don't need to go down that path."

A common misstep occurs when staff members prematurely dismiss the need for a 504 evaluation, assuming that existing classroom support is sufficient, said Helfrich. For example, a teacher might mistakenly tell parents that a 504 plan wouldn't do anything for the student that is not already done for all students in the classroom.

"We don't know right away if a student qualifies for a 504 plan, but he may be entitled to the protections of the law," Helfrich said. "He may be eligible for additional support." She stressed that a 504 evaluation is the only way to determine if that's the case. Preemptively denying the need for an evaluation can be detrimental to a student's academic and emotional well-being.

Misstatement 2: "We can't do anything until we have a medical diagnosis."

Another frequent misconception is that a medical diagnosis is a prerequisite for a 504 evaluation, Helfrich said. "[The] Office for Civil Rights has been pretty clear ... that a student may or may not be eligi-

ble without a medical diagnosis." While medical information can be helpful, she said its absence should not be a barrier to initiating the evaluation process. Delaying evaluation due to the absence of medical documentation can deprive students of timely support. Helfrich said this can exacerbate existing challenges and lead to further academic and social difficulties for the student.

Misstatement 3: "We won't start the evaluation until we have X amount of data."

Sometimes, school staff may delay initiating a 504 evaluation until they have collected a specified amount of data, Helfrich said. Yet under Section 504, "you don't want to have a blanket rule of 'We won't even consider 504 until we have certain amounts of data.'" The decision to evaluate should be based on an individual assessment of whether a disability is suspected, said Helfrich, not on a fixed data collection timeline.

The process "might look different for each child, and the information we need is different for each child," said Helfrich. It's not appropriate to require every student to undergo the same assessments or interventions before considering a 504 evaluation. A delay in the evaluation can result in missed opportunities for early intervention and support, which can be crucial for a student's success, Helfrich explained.

Misstatement 4: "The student will not qualify."

Predicting the outcome of a 504 evaluation before it begins is another pitfall to avoid, said Helfrich. The question is not whether we are 100 percent sure the student will be eligible but whether we suspect he might have a disability, she explained.

The evaluation's purpose is to determine eligibility, not to prejudge the results, Helfrich said. She warned that making a definitive statement about a student's eligibility before the evaluation process is complete can discourage parents from pursuing necessary support for their child. ■

Grab the auto-injector, strive to mitigate nut allergy dangers

Students' nut allergies should never be overlooked. Educators must take appropriate precautions to prevent serious reactions.

Students with severe nut allergies are entitled to Section 504 accommodations and services to receive FAPE. In *Hillsborough Township (NJ) Public Schools*, 116 LRP 38357 (OCR 2016), a parent alleged that the district failed to implement her daughter's 504 plan. To fulfill the plan's accommodations, the district agreed to properly notify the parents of her classmates about the need to keep certain allergens out of the classroom.

Keeping students with nut allergies safe can feel overwhelming. Educators must rise to the challenge, proactively providing accommodations to ensure these students can access their education. Below, explore ways to remain legally compliant while protecting students with nut allergies.

Implement safety measures

These techniques can mitigate the risk of severe allergic reactions:

- **Classroom flyers.** Without identifying names, use flyers to indicate the presence of students with nut allergies, said Tammy Saxon, director of exceptional education and student services for Bradford County Schools in Florida. These flyers should be visible to everyone in the school, so it is best to hang them on classroom doors.
- **Home notification.** "[Parents] have to be cognizant of what they send their kids [to school] with," said Saxon. At the start of the school year, educators should send notes home to parents to share that someone in the classroom has a nut allergy.
- **Letters with tips.** It's important to "send letters home with a few guidelines [regarding] what to be careful of," Saxon said. This builds the parents' trust, showing that the student is in good hands and educators are attentive to his needs.
- **IHPs, 504 plans.** Confirm that all students with nut allergies have appropriate plans in place, said Saxon. Individual health plans are handled by the school nurse, but depending on the severity of the allergy, a student may need both an IHP and a 504 plan.

In *Memphis (TN) City School District*, 112 LRP 26130 (OCR 2012), the district failed to properly evaluate students with IHPs for potential disability classifications. The district was required to revise its evaluation policies and explore possible Section 504 eligibility for students with other health impairments.

Provide accommodations

For students to qualify for accommodations under Section 504, they must have a "physical or mental impairment" that "substantially limits one or more major life activities." 28 CFR 35.108(a)(1)(i). A student

with a severe nut allergy falls under this category if the allergy impedes her ability to breathe.

One helpful accommodation for these students involves providing alternative, nut-free food choices at lunch, Saxon said. School staff should also ensure that students sit at nut-free tables in the cafeteria. Saxon added that they can sit in the "safest part" of the classroom, which offers the least risk of exposure to nut-related allergens.

Sometimes, it may be necessary to totally ban these allergens within the classroom. In *Mystic Valley Regional Charter School*, 40 IDELR 275 (SEA MA 2004), the impartial hearing officer held that the district's failure to ban nut-related products discriminated against a student with a life-threatening allergy.

Another common accommodation might address the administration of medication if the allergic reaction is severe enough in the presence of an allergen, said Saxon. The administration of medication should also be included in a student's health plan with an emergency health plan on standby. She added that the student's parents, physician, school nurse, and teacher must be involved in the decision of whether medication at school is necessary and how it will be administered. For example, the school nurse would be the one to administer the medication or epinephrine auto-injector in cases where the student is experiencing an allergic reaction, said Saxon. ■

Resist requests for unnecessary Section 504 plans before high-stakes testing

Impending high-stakes testing for high school students may ignite the nerves of parents. They may make misguided attempts to secure Section 504 plans to give their children a leg up or get a disability on the books before college.

But accommodations in a 504 plan won't necessarily lead to improved Advanced Placement, International Baccalaureate, ACT, SAT, or other test scores.

"Accommodations aren't a guarantee of a particular outcome," said Hans P. Graff, an attorney at Leon Alcala PLLC in Houston, Texas. "You're looking at what do students need now in order to not be excluded from this [test]."

Decisions about testing accommodations must be made by a group of people — those knowledgeable about the student, the meaning of the evaluation data, and the placement options. 34 CFR 104.35(c). It's important for 504 teams to understand what to investigate if parents request a 504 plan for their child as he approaches high-stakes testing. Even if you are skeptical of the student's needs, you must evaluate to avoid discrimination and an unintentional child find violation.

Check off these tips below to see when students may or may not need 504 plans for testing accommodations.

✓ **Discuss classroom concerns.** Regardless of whether you think the student's need is legitimate, conduct an evaluation to rule out any uncovered needs for supports, Graff said. Look into whether the student turns in assignments on time and makes good grades. The accommodations a student receives for an AP or another test are typically determined by the accommodations he needs in the classroom. So, if a student has never asked for accommodations during tests in class, he likely won't need them for an AP or another test. Also, see if the parents have any new information from private providers to share.

Even if you learn the student has a disability, such as anxiety, she may not need a plan for accommodations. She may just be covered by the nondiscrimination provisions of 504. *See Dear Colleague Letter*, 58 IDELR 79 (OCR 2012).

✓ **Review timing of request.** It is rare for a student who has been successful to suddenly require accommodations later in high school unless there was an accident, illness, or mental health disorder beginning to manifest itself, Graff said. "If the student hasn't needed those accommodations in the classroom, they probably don't need them for the tests even though they may do better," he said. "They may do better with extended time or in a small group, but that's not the issue. The issue is, are they being afforded the same access as nondisabled students?"

✓ **Consider 2e students.** At the same time, recognize that gifted students may also have disabilities, Graff said. Without doing a thorough evaluation, don't assume a gifted student doesn't need accommodations. Also recognize that a student may be average in math but gifted in English/language arts. The student may not need accommodations in all subjects. "It's kind of tricky," he said. "Just because they're gifted doesn't mean they can't have a disability."

✓ **Question behavior.** Besides looking at the student's academic performance, it's important to see if teachers and other staff members notice any be-

havioral issues that would point to a need for testing accommodations, Graff said. For example, the student may be easily distracted and fail to complete tests on time.

✓ **Involve students in discussion.** You may want to ask how the student feels before and during tests, Graff said. If she didn't do well on a particular one, you can ask why she thinks that happened. It may just be that she didn't study until the last minute or is not keeping up with her assignments. "There may be an issue that goes further and implicates 504," he said. "There's nothing wrong with asking students if they feel like they're getting what they need in terms of testing in the classroom." ■

EXPERT INSIGHT: School holidays, breaks can delay districts' 504 investigations

Fall holidays, spring breaks, and summer vacations give school staff and students a chance to reboot and refocus. But their absence can create headaches for administrators, especially when it comes to following all the steps in Section 504 grievance procedures in a timely manner.

Section 504 requires districts to adopt grievance procedures and provide prompt and equitable resolution of complaints. 34 CFR 104.7(b). But what is "prompt"?

Your school or district needs to have a plan for keeping a 504 investigation on track while school is out of session. How and when an investigator should proceed while the staff is away should be clear and communicated to parents. Study the scenario below as well as what steps your school could take when a grievance involving disability discrimination is received just before a school break.

Delayed 504 investigation scenario

In May, a teen with ADD was involved in several behavioral incidents that resulted in his dismissal from an environmental academy within his public high school. He did not have a 504 plan. His mother filed a grievance with the school a week after classes ended for the academic year. She claimed that the academy directors knew about her son's ADD, that the school was unable to meet his needs, and he was subject to disability discrimination.

The school's 504 grievance procedures provided that within 60 days of receiving a complaint, the district ombudsman should complete an investigation and provide the complainant with a final written report of the investigation and decision. The ombudsman took the complaint but paused the investigation, as per district policy, because key witnesses were on summer break.

There was a three-month delay in commencing staff interviews. The district sent the parent a written summary of its investigation and determination months later.

The teen's parent contacted OCR and claimed the grievance procedures failed to comply with Section 504 because there wasn't a prompt investigation.

Outcome of OCR complaint

OCR concluded in *Oakland (CA) Unified School District*, 113 LRP 27902 (OCR CA 04/16/13), which formed the basis of our scenario that the district investigated the complaint timely.

The three-month delay in commencing staff interviews was reasonable given their unavailability, OCR concluded. OCR pointed out that ombudsmen followed district policy. It also noted that he interviewed the parent in July and the district staff in September and October.

Takeaway: Preparation is key

In this day of Zoom meetings, emails, texting, and parent portals, it is easier than ever to stay in touch with parents and staff. What was once considered a "timely" response years ago may no longer be today.

But do improved means of communication mean that the staff always needs to be available if an investigation is underway? Probably not. OCR has explained that ["what constitutes a reasonable response will differ depending upon the circumstances." *Turlock (CA) Unified Sch. Dist.*, 121 LRP 36516 (OCR CA 08/11/21).

A good approach might be to specify in the policy how investigations of grievances will proceed during school breaks. For example, provide that if a disability discrimination complaint is made during the summer recess, it will be reviewed and addressed as soon as possible. The review depends on the availability of staff and other individuals who may have relevant information, but it will be no later than 15 school days after the start of the school year.

Also, when a complaint is received, promptly communicate the policy to the parent. Point out in the notice that the investigation has been impeded by the

summer recess and interim measures may be implemented as necessary. Explain that staff interviews are worth the wait. Even OCR noted in the most recent Case Processing Manual that "interviews are an integral part of investigations."

During your communications with the complainant, add that the investigation won't come to a screeching halt. The investigator can continue to gather evidence, or as was the case in *Oakland*, interview the complainant. It may also be possible to interview the student.

Just as the staff plans for holidays and vacations, districts should plan for the effects that school closures have on 504 grievance investigations. Be proactive and upfront to avoid claims of unreasonable delays.

Julie J. Kline, Esq., covers special education legal issues for LRP Publications. ■

Possible outcomes of 504 eligibility meeting

A student is suspected of having a disability that limits a major life activity. Following completion of the assessment/evaluation, the Section 504 coordinator will hold a meeting to review the information, determine eligibility, and decide how to proceed. There are four possible outcomes of the meeting. Review them with your 504 team, including parents, before that meeting begins.

1. The student is determined to be eligible for free appropriate public education pursuant to a Section 504 plan.

2. The team determines that it needs to collect more information before making a 504 eligibility determination.

3. The student is determined to be ineligible as a student with a disability under Section 504 and will not receive services pursuant to a Section 504 plan. However, the student does require some interventions that can be developed by the school intervention team.

4. The student is determined ineligible as a student with a disability under Section 504 and not eligible to receive services pursuant to a Section 504 plan. The student has no need for interventions. The student will be served in the regular education program without specific interventions. ■

Failure to keep parents in loop doesn't nullify investigation of restroom incident

Case name: *Close v. Bedford Cent. Sch. Dist.*, 124 LRP 26315 (S.D.N.Y. 07/16/24).

Ruling: The parents of three unrelated teenagers with autism could not pursue disability discrimination claims against their sons' New York district for its alleged mishandling of peer sexual harassment. The U.S. District Court, Southern District of New York granted the district's motion to dismiss the parents' Section 504 and ADA Title II claims, as well as the parents' IDEA, FERPA, and 14th Amendment claims.

What it means: A district's failure to investigate alleged disability harassment in the exact manner a student's parents would have liked does not in itself violate Section 504 or the ADA. Still, the district should strive to communicate with the parents of affected students and keep them apprised of the investigation's status. Although this district began investigating as soon as it learned the students had been photographed using a school restroom, it gave the parents very little information in the months that followed. That lack of communication from administrators likely fueled the parents' opinion that the district was deliberately indifferent to peer bullying.

Summary: Although the parents of three unrelated teenagers with autism criticized a New York district's investigation of an incident in a school restroom, they could not show the district was deliberately indifferent to bullying. The District Court held that the district's response, while imperfect, required it to dismiss the parents' Section 504 and ADA claims.

U.S. District Judge Cathy Seibel explained that a district's liability for disability-based peer harassment turns on whether the district was "deliberately indifferent" to the alleged discriminatory conduct. To obtain relief, the judge observed, the parents had to demonstrate that the district had actual knowledge of disability-based harassment and that its response was clearly unreasonable in light of known circumstances.

Judge Seibel concluded that the allegations in the parents' complaint did not establish deliberate indifference. She noted that the district first learned of peer bullying on March 11, 2022, when a student whistleblower informed the special education teacher that peers had photographed the students using the restroom. The judge pointed out that the high school principal contacted the parents the following week and informed them that he was investigating the matter.

The judge acknowledged the parents' frustration with the slow pace of the investigation and the district's failure to provide meaningful updates, especially after the pictures began circulating on social media. Still, she rejected the notion that the district's response caused the students to suffer additional harm. "There are no allegations in the [complaint] that the [students] experienced any further bullying after the March 11 incident or that the investigative failures made [them] more vulnerable to bullying," the judge wrote.

While the delays and poor communication might reflect poorly on district administrators investigating the incident, the judge explained, they did not show that the district was deliberately indifferent. ■

Teen's suicide, district's 2-year failure to offer therapy sparks ADA, 504 claims

Case name: *Skroupa v. Shaler Area Sch. Dist.*, 124 LRP 24309 (W.D. Pa. 07/03/24).

Ruling: The U.S. District Court, Western District of Pennsylvania held that the mother of a 13-year-old boy with OCD who took his own life could pursue Section 504 and ADA Title II claims against a district. It also ruled that the student's sister in 12th-grade who has anxiety and depression could pursue intentional discrimination claims against the district. However, the court dismissed the parent's associational discrimination claim and constitutional claims.

What it means: When a district becomes aware of a student's emerging mental health issues, it should promptly conduct an evaluation and offer any necessary accommodations. Not only will this ensure the student receives appropriate supports, but it will also demonstrate the district's efforts to address the student's needs. After learning of this student's OCD, the district should have reserved a quiet room for the student's daily psychotherapy sessions and referred him for an evaluation. Had the district timely provided the student appropriate 504 or IEP services, it may have reduced the student's risk of suicide and prevented the parent's intentional discrimination claims.

Summary: Because a Pennsylvania district knew that a 13-year-old boy with OCD required psychotherapy, its failure to evaluate him and develop a Section 504 plan may have amounted to intentional discrimination. Noting that the parent's requests for services "went unanswered for approximately two years until [the student's] suicide," a District Court declined to dismiss the parent's Section 504 and ADA claims at this stage of litigation.

To assert viable intentional discrimination claims under Section 504 and Title II, the parent had to establish that the district was deliberately indifferent to the student's needs. The parent satisfied this requirement, the court determined.

In 2020, the student allegedly began receiving daily outside psychotherapy for his OCD. The parent allegedly informed the district of the student's diagnosis, mental

health issues, and academic problems. She also requested a space in the school where the student could participate in his virtual psychotherapy sessions. The district allegedly denied this request and required the student to access outside therapy appointments from his parent's car in the school parking lot, the court noted.

What's more, there was no evidence that the district attempted to evaluate the student's eligibility for Section 504 or IDEA services until his suicide in 2022, the court highlighted. Because these factual allegations, if true, indicated that the district was deliberately indifferent to the student's needs, the court declined to dismiss the parent's intentional discrimination claims.

The court also declined to dismiss the intentional discrimination claims filed by the student's 12th-grade sister with anxiety and depression. She alleged that although her grades deteriorated after her brother's death, the district failed to offer her counseling or any other mental health supports. She also alleged that the district failed to evaluate and develop a draft 504 plan for more than a year. These allegations, if true, demonstrated that the district acted deliberately indifferently, the court opined. ■

N.C. district documents that mom agreed to postpone 504 eligibility decision

Case name: *Corvian (NC) Cmty. Charter Sch.*, 123 LRP 34369 (OCR 10/24/22).

Ruling: The Office for Civil Rights found insufficient evidence of retaliation in violation of ADA Title II and Section 504 by a North Carolina district against a student with an undisclosed disability.

What it means: ADA Title II and Section 504 prohibit school districts from retaliating against an individual who advocates on behalf of students with disabilities. To show it had a legitimate reason for delaying an eligibility decision, this district submitted documentation reflecting that the parent agreed to a postponement of the decision and that any delay was not in retaliation for her due process complaint.

Summary: Any delay in determining that a student with an undisclosed disability was eligible under Section 504 was not in retaliation for the parent's filing of a due process complaint. The North Carolina school made the decision according to its established process and had documentation that the parent had agreed to postponements.

The parent requested an evaluation but asked that the school postpone the 504 meeting until after the IEP team met to determine eligibility. The district found the student ineligible for an IEP. The 504 team, including the parent, then determined it needed more information. The school conducted targeted interventions and observations. The parent agreed to wait until a private evaluation was completed. The 504 team then met, found the student eligible, and developed a plan.

The parent informed OCR that the district retaliated in response to her filing of a due process complaint by waiting until the end of the school year to find the student eligible. To establish retaliation in violation of ADA Title II and Section 504, the parent had to show that she engaged in a protected activity, she experienced an adverse action, and there was a causal connection between the two, OCR explained. OCR then determines whether there was a genuine, legitimate, nonretaliatory reason for the adverse action.

Even if the parent established retaliation, OCR determined that the school offered legitimate, nonretaliatory reasons for the delay in making the 504 eligibility decision. The 504 team, made up of a group of knowledgeable people, believed, based on appropriate data from a variety of sources, that additional observations and interventions were appropriate before determining eligibility, OCR explained. Contemporaneous documentation indicated that the team promptly reconvened after agreed-upon postponements and soon after receiving the private evaluation, it noted. And the eligibility decision was made in accordance with the school's established process, OCR added.

It found insufficient evidence that the district retaliated. ■

Mass. district provides child's services by rotating staff as contemplated by IEP

Case name: *Quaboag Reg'l (MA) Sch. Dist.*, 124 LRP 22472 (OCR 01/24/23).

Ruling: The Office for Civil Rights found that a Massachusetts district implemented the IEP of a child with an undisclosed disability, complying with ADA Title II and Section 504 and providing him FAPE.

504 quick quiz

Q: *Can district employees serve as Section 504 hearing officers?*

A: No. The Section 504 regulation at 34 CFR 104.36 states that a district's system of procedural safeguards must include an opportunity for an impartial hearing. OCR has interpreted this impartiality requirement to mean that district employees and school officials, including school board members, cannot serve as hearing officers or review officers. *See, e.g., Mathews County (VA) Pub. Schs.*, 114 LRP 42768 (OCR 04/09/14) (finding that a Virginia district violated Section 504 by allowing its Section 504 coordinator, assistant superintendent, and superintendent to serve as hearing officers).

What it means: A district discriminates and denies a student FAPE when it fails to implement his IEP. This case highlights the importance of memorializing IEP team understandings in detail in the IEP. Because this child's IEP contemplated the provision of services and supports by a variety of providers, not only a special education teacher, the district was able to implement the IEP in the special education teacher's absence utilizing other staff. Had the combination of service providers not been contemplated by the IEP, or if services were expressly to be provided by a certified special education teacher, this case would've ended differently.

Summary: A Massachusetts district provided the services and supports required by a child's IEP and behavior plan in his special education teacher's absence although it did so with other staff. The small amount of missed services did not discriminate or deny the child FAPE.

The child's IEP provided for instruction with a combination of general educators, special educators, and related service providers.

The parent contacted OCR alleging that the district discriminated by failing to implement his son's IEP. Specifically, he asserted the district didn't provide services and supports from a special education teacher in the teacher's absence and failed to maintain daily communication.

ADA Title II and Section 504 require districts to provide students with disabilities FAPE, by way of regular or special education services designed to meet their individual educational needs as adequately as the needs of nondisabled students are met, OCR explained. Implementation of an IEP developed in accordance with the IDEA is one means of meeting this standard, it added.

The district posted the open special education teaching position and, in the interim, assigned the school counselor to supervise the child's program. The school counselor provided services to the child, and staff rotated to cover required services and minimize disruption. This was in compliance with the IEP, which allowed for support by a combination of service providers, not only a special education teacher, OCR found.

Therefore, the district did not fail to implement the IEP, OCR concluded. It complied with the staff-to-student ratio required under the IEP, OCR added. And, because the child missed a limited amount of services, the district did not deny him FAPE, OCR found.

Finally, OCR determined that the IEP didn't require daily communication with the parent, although he requested and expected it, based on prior communication and daily notes provided by teachers. ■

Teachers' testimony about providing accommodations ends retaliation claim

Case name: *Virgin Islands (VI) Dep't of Educ.*, 124 LRP 22474 (OCR 01/24/23).

Ruling: The Office for Civil Rights found insufficient evidence of discrimination or retaliation in violation of ADA Title II and Section 504. The Virgin Islands did not retaliate against the parent of a student with an undisclosed disability by failing to implement his 504 plan, OCR determined.

What it means: Under the ADA and Section 504, an essential element of discriminatory retaliation is an adverse action. Here, because the parent couldn't show that she was subjected to any adverse action in the form of failure to execute her child's 504 plan, she couldn't prove retaliation. The district established it provided the student with the accommodations and related aids under his plan with fidelity with teacher testimony about daily check-ins, reminders about assignments, and the absence of any poor grades for late assignments. It also showed that all students experienced a decline in academic achievement during virtual instruction.

Summary: Because the parent of a student with an undisclosed disability couldn't show that the Virgin Islands failed to implement her son's 504 plan or took any adverse action in connection with an OCR complaint, she couldn't make a case for retaliation. OCR closed the case.

The student's 504 plan provided for extended time on tests and assignments. The parent alleged that the district retaliated for a previous complaint she filed with OCR by failing to implement her son's 504 plan.

To establish retaliation in violation of the ADA Title II and Section 504, the parent must show she engaged in a protected activity, she experienced an adverse action caused by the district, and there was a causal connection between the two, OCR explained. Then, OCR determines whether the district proffered a genuine, legitimate, nonretaliatory reason for the adverse action.

The student's teachers informed OCR that they provided him with as much time as he required to complete and submit assignments. They explained that they never penalized him for submitting assignments late. They asserted that they routinely checked in with the student and asked about his accommodations, provided them if requested, and reminded him to submit assignments. The district explained that all students attended class virtually during that time and a decline in academic performance was inherent in the virtual setting.

OCR found that the district provided the student with his 504 accommodations. The parent provided no evidence of an occasion when he required and didn't receive his accommodations or when a teacher didn't provide his accommodations or afford him extra time, it observed. And, it pointed out, the parent acknowledged that she never complained to the district that the student hadn't received his accommodations.

Because the district implemented the student's 504 plan, it didn't take any adverse action against the student as alleged, OCR concluded. In the absence of an adverse action, the parent cannot establish retaliation, OCR explained. ■