

# Section 504 COMPLIANCE ADVISOR

ROUTE TO	

Your Guide to Understanding and Administering Section 504

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## Set 504 coordinators on road to compliance this year

With the new school year underway in many districts, special ed directors are equipping Section 504 coordinators to serve their caseloads.

Diana McMillen, director of student services for Wooster City (Ohio) Schools, begins by reviewing relevant procedural items and making sure her district's 504 coordinators have correct rosters of all their students with 504 plans. But her work doesn't end there.

Assuming coordinators remember all the ins and outs of Section 504 requirements can cause legal problems down the line. In addition to confirming the team's understanding of 504 rules and procedures, be sure they know when students' plans need updating. McMillen shares more tips for getting 504 coordinators on the same page and ready to serve students effectively.

### Make sure coordinators up to speed

Section 504 plans are part of a spectrum of student supports that include IEPs, McMillen noted. If a student has a disability but his needs do not significantly impact academics, she said the team should consider whether other accommodations might be needed in a 504 plan to ensure FAPE.

Federal and state rules for 504 plans have not changed significantly in recent years, McMillen said. However, proposed updated federal Section 504 rules are anticipated in November 2024. "We have a really good legal team that gives us notice when things change," she said, "and I try to keep up with it on my own."

McMillen meets with building counselors who manage the Section 504 program to go over procedures, timelines, and forms. If no new counselors have joined the staff, it serves as a refresher. She makes sure staff know that as referrals for evaluation come in throughout the year, requests for accommodations cannot always be granted.

"We get a lot of prescriptions, if you will, from doctors," she said. "We've talked about scheduling meetings with local doctors to talk about what that looks like educationally. A [doctor's] recommendation to talk to the school team is great, but sometimes it might not be appropriate to [give] the student a 504 [plan]."

### Anticipate updating, closing out 504 plans

Federal law requires that a 504 plan be formally updated at least every three years, but McMillen said it's a good idea to do it annually. If a student has

(See **COORDINATORS** on page 3)

## Was Utah student denied admission to gifted program based on disability?

A student had an IEP for undisclosed disabilities. He didn't qualify for automatic admission to the district's gifted program based on his standardized cognitive test scores. The district offered him an opportunity through an appeal process to provide supplemental information and show that a full-day gifted program was an appropriate placement.

The parent filed an appeal.

The appeals committee used a spreadsheet showing cognitive scores and responses to prompts but not disability or personally identifying information. The committee reviewed scores, responses, and any supplemental information submitted. It also verified that the student received testing accommodations required under his IEP.

The committee determined that the student didn't demonstrate that the full-day gifted program was an appropriate placement in light of his cognitive scores. The narrative responses on the appeal form didn't contain enough additional information to demonstrate giftedness in specific domains, according to the district.

But, the student's sibling was admitted based on supplemental information provided through an appeal. The sibling's scores reflected stronger overall performance.

The parent alleged that the district treated her son differently based on disability. She identified another student who didn't have a disability and didn't submit supplemental materials with an appeal but was accepted.

To find whether a district discriminated based on disability in violation of ADA Title II and Section 504, OCR looks to whether the student was treated differently than nondisabled peers under similar circumstances and denied services, benefits, or opportunities. Then, OCR checks whether the district provided a genuine, legitimate, non-discriminatory reason for its actions other than disability.

**Did district assess student's application differently?**

**A. No.** The district treated appeals of students with and without disabilities the same.

**B. Yes.** The district's gifted program admission policies were discriminatory.

**C. Yes.** The district had no reason to deny the student's appeal but for disability.

How the Office for Civil Rights found: A.

In *Salt Lake City (UT) School District*, 124 LRP 22494 (OCR 01/31/23), OCR found insufficient evidence that the district denied the student's appeal because of his disabilities. Students with and without disabilities had the same opportunity to file appeals, it noted. The appeals committee didn't know about disability status or accommodations unless the family chose to share that information in optional supplemental information.

Further, the student the parent identified wasn't an appropriate comparator because the student was at a different grade level at the time and took a different test, OCR found. That student's experience wasn't evidence of differential treatment, it explained.

The student wasn't treated differently in the admissions or appeals process.

B is incorrect. The district's appeal process didn't raise compliance concerns with OCR. The same eligibility criteria applied to students with and without disabilities. And gifted students included students with disabilities who automatically qualified for admission based on their cognitive scores.

C is incorrect. The district articulated legitimate, nondiscriminatory reasons for any differential treatment, OCR found. It relied most on cognitive score percentiles absent additional information for students of the same grade level, which were objective criteria.

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

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**COORDINATORS** (continued from page 1)

changed buildings, she said the team should meet quickly “so that we’re not going six months before we have a conversation about whether accommodations are working.”

Sometimes, the update will happen at the 12-month anniversary of the 504 plan, McMillen said. Or, she said, some students effectively age out of needing a plan. This can occur because they respond to medication or learn coping strategies as they mature so that behavior becomes less of an issue.

“It’s best practice to have a conversation or a touch point with the families every year,” said McMillen. “We need to make a good first impression because every student comes from a different background, and we want to be open to what the families have to say. They’re the experts on their kids, we’re the experts on education, and we come together as a team.”

If issues with a 504 plan arise during the school year,

McMillen said most often the counselors will work it out with the building principal.

**Promote staff collaboration, data access**

Many other roles and staff at the school are looped into the 504 process as needed, said McMillen. For example, school nurses may need to train teachers to use an epinephrine auto-injector or inhaler for students with severe allergies or asthma.

McMillen said through the district’s software platform, counselors and principals have access to data on all students with 504 plans, and teachers have access only to their students’ information. McMillen uses that database as a starting point for regular reports to her state department of education.

The district system has developed a checklist for 504 plans, McMillen said. In the future, however, she hopes to improve access to documentation with “a place on our staff intranet that would have all of the resources necessary.” ■

## FAPE, retaliation claims comprise bulk of pending OCR investigations

If you look at the list of disability discrimination complaints currently pending before the U.S. Department of Education’s Office for Civil Rights, you can’t help but notice a trend.

As of Aug. 15, 2024, OCR’s website lists 1,798 disability discrimination investigations opened against K-12 districts and charter schools between Aug. 1, 2023, and July 31, 2024. While the pending cases involve various types of disability discrimination, 734 of those open cases, or just over 40 percent, involve allegations related to FAPE. Another 302 open cases — almost 17 percent of the pending investigations — involve claims of unlawful retaliation.

Type of disability discrimination alleged	Number of open investigations
FAPE	734
Retaliation	302
Denial of benefits	233
Disability harassment	204
Accessibility	68
Discipline	63
Effective communication	43
Restraint and seclusion	42
Accessibility — website/online courses	35
Procedural requirements	18

Type of disability discrimination alleged	Number of open investigations
Nonacademic services	16
Others	15
Service animal	10
GT/STEM/CCR/CTE	6
Academic adjustments	5
Resource comparability	3
Admissions and recruitment	1

Source: U.S. Department of Education, Office for Civil Rights

The total number of pending investigations opened in the past year varies greatly from state to state. Sixteen states and U.S. territories have fewer than 10 pending disability discrimination cases each. Other states have much higher numbers. Four states — Texas, California, Michigan, and New York — have more than 100 pending cases each.

The opening of an investigation does not mean that OCR will find a district liable for Section 504 or ADA Title II violations. As OCR states on its website, “inclusion on the list does not mean that OCR has made a decision about the case.” Still, districts may wish to use this data to help guide their decisions on professional development and staff training.

For more information about pending OCR investigations, visit <https://ocrcas.ed.gov/open-investigations>. ■

## Understand district obligations when students with disabilities face addiction

Picture a high school student who had showed signs of anxiety but had not yet been referred for evaluation, then entered treatment for illegal drug dependence. The student is now returning to school. The condition of anxiety might be impeding his educational access, but the Section 504 team is concerned the history of substance abuse could complicate the next steps.

What are the district's obligations to this student? "The lawyer answer is, 'it depends,'" said Catherine Lyons, an attorney in Massachusetts who represents public school districts. But, she added, there are some recommended actions to take for a student in these circumstances.

Section 504 teams must be aware of how addiction intersects with other student conditions that warrant evaluation and accommodations. While substance abuse is not, by itself, a qualifying condition, ignoring potential underlying mental health issues could create legal risks. Below, Lyons walks districts through what they need to know regarding students with disabilities who also face addiction.

### Realize student may not qualify for 504 plan

A student who did not previously have a 504 plan does not automatically qualify for one upon returning to school after drug treatment, Lyons said. "You don't write a 504 plan for something that happened in the past."

If he is in recovery, however, "that student has a history of having a disabling condition, and the district is prohibited from discriminating on the basis of their history," said Lyons. A return to school is therefore a good time to look at the totality of the student's circumstances.

"If you need a formal evaluation to make an eligibility determination, I advise [districts] that it's incumbent on you to offer that evaluation," Lyons said. "It could mean asking for a release of information from the child's physician. If the student has a history of substance abuse and received treatment, there's a record of that somewhere."

Keep in mind that addiction may be only one piece of a much larger puzzle of the student's challenges, said Lyons. If the student has anxiety and one symptom is self-medicating, then drug counseling may make it into

a 504 plan. But Lyons said since addiction is a medical condition, therapy is considered medical treatment, and the school is under no obligation to pay for it.

### Focus on mental health

"Recovery high schools" can offer students with a history of substance use the chance to receive built-in support along with their education, Lyons explained. But even if such a setting is not available, she said, "[Districts] are really making a concerted effort to address the issues of mental health and substance abuse."

The way to address addiction issues is to destigmatize them, said Lyons. "But one of the challenges seems to be that sobriety doesn't happen in a linear fashion. It's often one step forward and two steps back."

With more than 25 years of advising school districts, Lyons has seen attitudes toward addiction become less punitive and more health-oriented. In her experience, all types of schools succeed in offering counseling of some sort. "If you're in a tiny rural district, you might have a counselor divided between schools, but you still have a counselor," she said.

Lyons highlighted school nurses and local health departments as additional resources for students who are reentering high school following drug treatment. And if the student is getting a 504 plan or having a previous one revised, she encouraged the direct support provider to sit in on the meeting — even if the plan has nothing to do with mental health or substance abuse.

The bottom line, Lyons said, is that "schools are in the business of trying to help kids. If drugs impede their progress, you don't have to treat the addiction." But she said if something else is underlying the addiction, the 504 team should "look under the hood and try to address that something else."

"Schools are faced with obstacles to student progress and learning every single day," said Lyons. "But the job doesn't begin and end with those obstacles." Schools need to document their interventions, she said, and if parents complain that the child hasn't succeeded, "at least you can say that these are all the things we tried to do." ■

## Never give up when many students need same accommodation

Staff shortages may affect not only students' access to instruction, but also their access to Section 504 accommodations.

If multiple students require, for example, a quiet environment for testing, enough staff have to be available to follow through on that accommodation. The lack of

space may also make it hard for several students to receive the same accommodation.

"Not having enough people to implement the accommodations in students' 504 plans is definitely an issue," said MaryGrace Bell Kittrell, an attorney at Parker Poe Adams & Bernstein LLP in Atlanta, Ga. "By planning



ahead as much as you can, a lot of those situations can be resolved with some creativity.”

Section 504 teams must weigh all their options if they know more than one student requires the same accommodations this school year. To protect FAPE, teams have to ensure they provide what students are entitled to. Review these ways to address similar accommodations across numerous students, so they all can access the supports they need.

### **Clarify necessity of accommodation**

Before agreeing to offer an accommodation you know may be difficult because of a staff shortage or lack of space, make sure the student truly needs it, Kittrell said. “Educators are very nice people and are not interested in conflict, so sometimes they agree to accommodations because parents want them even though [they’re] not necessary legally. If we think something is necessary and reasonable, then we need to do our best to be creative to provide that accommodation.”

### **Be upfront with parents**

If multiple students require the same accommodation, such as a quiet environment during testing, but only so many staff members are available to implement it, tell parents the truth, Kittrell said. Explain the efforts you are taking to fill staff vacancies and how you are using staff in the meantime.

“It’s a real problem because, say you have five students who need testing accommodations, and you only have four people able to do it,” she said. “You have to use people in the building for different purposes. Case law shows that judges look kindly on schools that are being very proactive in addressing staffing shortages and can show they’re really trying to resolve those issues.”

### **Get creative**

Recognize that a student may be able to benefit from an accommodation that is slightly different from what was originally sought, Kittrell said. For example, a student may be able to engage in testing paired with another student instead of in a room by herself. She may be able to take a test at a different time of day. Or she may be able to wear headphones to block out sound and stay in the classroom. “That could be something you specify in the 504 plan,” she said. “Schools should be using out-of-the-box thinking instead of just allowing the 504 plan not to be implemented.”

Indeed, if space is an issue, discuss using the library when it is quiet or finding time when a related service provider’s room is empty, Kittrell said. “Think about every possible room in the building,” she said. “Are there certain things you can rearrange in the schedule?”

You may also want to seek out staff from other school buildings if no one is available in the student’s building to provide an accommodation, Kittrell said.

### **Document discussions**

Share in the meeting notes what you discuss regarding a student’s accommodations so it’s clear later on that you considered multiple solutions, Kittrell said. “Documenting your discussion shows that the team wasn’t just throwing up its hands and saying it can’t make it work,” she said. “These are tough problems. Talking through them and trying to come up with solutions will go a long way.”

Also document what you try to do when there is a challenge in implementing the plan, Kittrell said. You may discover that the change didn’t have a negative effect on the student. “If you run into a situation where you can’t provide the accommodation, document, document, document,” she said. “If you can show that it didn’t have an impact on the student, you’re going to be in a much better place.” ■

## **Athletics pose hidden dangers of discrimination**

Districts work hard every day to facilitate academic access for students with disabilities. But what about nonacademic activities such as sports? Ignoring this side of the school experience can increase the risk of Section 504 discrimination claims.

Whether students have 504 plans or IEPs, districts are obligated to give them an equal opportunity to participate in extracurricular activities and nonacademic services. 34 CFR 300.107(a); and 34 CFR 104.37.

“Districts sometimes forget that Section 504 also applies to our students with IEPs,” said Robin Day, a special education attorney in Oregon. “Ensure you are making those activities equally available to all students with disabilities.”

Full participation in school includes more than just courses and grades. Don’t overlook what this means for students with 504 plans or IEPs. Audit your district’s policies and practices regarding sports to confirm they are inclusive. Below, review Day’s reminders regarding athletic participation for students with disabilities.



### **Be careful with separate PE classes or sports teams**

Day warned against placing students with disabilities in adapted physical education unnecessarily. “Unless an IEP team or a 504 team has decided that students cannot participate in

regular PE, they should be participating with their typically developing peers,” she said.

Also consider a situation where a group of students with a similar disability can’t participate in a particular sport, said Day. While districts are not legally obligated to create a separate team, they are encouraged to do so. *Dear Colleague Letter*, 60 IDELR 167 (OCR 2013); and *Dear Colleague Letter*, 62 IDELR 185 (OCR 2013).

If a district chooses to create a separate team, Day said, it must ensure equity. “They have to make sure they are providing the same amount of support to that team as they’re providing to the similar team for typically developing kids. So the wheelchair basketball team is going to need the same access to the gym, the same access to athletic trainers, the same access to the weight room.”

In addition, Day said a student with a disability must still be given the opportunity to try out for the regular team if she chooses.



### Apply athletics requirements in nondiscriminatory manner

“School districts are allowed to make [team] entry competitive, and they don’t have to change the qualification requirements for students with disabilities,” Day said. Districts need to consider reasonable modifications or accommodations the student might need, like being able to run a mile within a certain amount of time.

“If a student with disabilities cannot compete even with a reasonable accommodation, the district is not required to give him any kind of special treatment,” said Day.

Day added that if general ed students must maintain a certain GPA to continue sports participation, the same can be required of students with disabilities. See *Northshore (WA) Sch. Dist. No. 417*, 48 IDELR 199 (OCR

2006). Districts just need to ensure the expectation is applied equally to all students.

Likewise, if a general ed student can be removed from a team for behavior infractions, the same can be done for students with disabilities, Day said. The exception would be a student whose disciplinary removals have been determined to be a manifestation of his disability. “I think districts would need to tread more carefully there,” said Day. “Everybody wants a black-and-white rule to follow, and it’s just tricky. You’ve got to really talk it out as a team.”



### Provide accommodations for sports, but only if appropriate

A school district must consider accommodations or modifications that will allow a student with disabilities equal opportunity to participate on sports teams, Day said. She cautioned that even if a student does not have an accommodation spelled out in his plan, he may still be entitled to it. And if he doesn’t receive it, she said a discrimination complaint could be filed.

For an accommodation that’s provided but not specified in the student’s plan, Day said, “Consider adding it next time the student’s annual review rolls around.” Adding the accommodation to the plan may not even require a meeting, she said.

At the same time, Day explained that an accommodation or modification cannot fundamentally alter the nature of the activity or give the student an unfair advantage. For example, in *Dear Colleague Letter*, 60 IDELR 167 (OCR 2013), the Office for Civil Rights noted that using a visual cue to signal the start of a 200-meter dash would level the playing field for a student with a hearing impairment without fundamentally altering a track meet or giving the student an unfair advantage over other runners. ■

## OT shares 3 best ways to aid students with orthopedic impairments

Picture a student who uses a wheelchair and receives pull-out services for most of the school day. She may begin to feel isolated from peers. Occupational therapists and educators must work together to ensure students with orthopedic impairments such as cerebral palsy and muscular dystrophy can fully participate in the educational experience.

“Everything that [OTs] do focuses on the students’ needs, their safety, as well as their preference,” said Candice Lienes, a school OT in Washington.

OTs aid students with orthopedic impairments not just by providing helpful accommodations but also by working with teachers to promote inclusion. Think bigger when considering the role of these important

related service providers in delivering FAPE. The following three suggestions highlight how OTs can make students with orthopedic impairments feel seen and heard in the classroom.

### 1. Get creative with accommodations

“There’s usually a lag time between identifying [students’] needs and obtaining the appropriate furniture or support,” said Lienes. OTs should get involved to expedite this process and ensure that support is tailored to each student through accommodations in a 504 plan, she said. Some will require different equipment or materials depending on the severity of the orthopedic impairment, Lienes said.

A common accommodation for students with muscle weakness is providing a pencil grip, which improves motor control and writing ability, said Lienes. Additionally, students can use computer-based accommodations for reading, writing, organization, or memory. She said examples include adaptive keyboards, voice-to-text speech, and predictive text.

For a student with mobility issues, equipment such as a walker or wheelchair ensures access to FAPE, Lienes said. Students can also receive altered time to transition to the next class. This allows them to move through the hallway when it's clear to avoid injuries from pushing or bumping, she said.

Adaptive seating is another way to support students with orthopedic impairments, said Lienes. For example, students with short statures might need a seat that raises them to interact with peers at eye level.

For students whose condition causes fatigue, modified schedules are an option, Lienes said. An example is putting core or more rigorous classes at the start of the day when students have more energy. Shortened days and rest breaks built into the schedule are other common accommodations, she added.

## 2. Collaborate with other service providers

It's helpful when OTs work with physical therapists to see "how [students'] mobility impacts their ability to do other self-care," Lienes said. For example, orthopedic impairments can pose challenges for toileting. "We might put our brains together" to support a student in mastering these life skills, she said.

OTs can also team up with speech language pathologists regarding the use of augmentative and alternate communication, said Lienes. OTs may "work alongside speech therapy to support cognitive processing and positioning" and help students access AAC devices, she said.

In addition, Lienes said OTs can deliver indirect services that equip general educators through modeling and training. OTs should check in frequently to stay updated regarding schedule-related and other changes and to assess teachers' needs for assistance.

## 3. Keep inclusion in mind

"Socially, it's easy for students with significant disabilities to become isolated," said Lienes. Students with severe orthopedic impairments rely on many different staff and experience general ed classes where most peers do not look like them. "We all have that tunnel vision," she said. Yes, we need to help students access their education, Lienes explained, but education also involves building relationships with classmates.

Educators can also promote inclusion by collaborating with OTs and PTs because, Lienes said, they are "masters of involving everyone to support equity." She suggested whole-class activities such as a "fine-motor game group," which provides intervention to both general ed and special ed students. "Having a peer partner program, leadership program, or club designed to promote inclusion and staff to support [these efforts] can be really helpful," Lienes said. ■

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## Section 504 grievance follow-up worksheet

### Identify staff members/students/others to be interviewed.

Name and Title:

Name and Title:

Name and Title:

Name and Title:

Name and Title:

### Documents to be reviewed.

Name of document/description:

Name of document/description:

Name of document/description:

Name of document/description:

### List further information needed to make determination of disability discrimination.

Name of document/description:

Name of document/description:

Name of document/description:

Name of document/description:

### Note findings and proposed resolution to the grievance.

Date district's 504 grievance procedures provided to complainant:

Date district's 504 written determination provided to complainant:

Date notice of right to request reconsideration/appeal given to complainant:



## Private school can't use timing of PPP loan to upend Sec. 504 child find claim

**Case name:** *Doe v. Abington Friends Sch.*, 124 LRP 31313 (E.D. Pa. 08/22/24).

**Ruling:** Parents who attributed a Pennsylvania student's mental health issues to her private school's lackluster response to peer bullying could sue the school over its alleged failure to accommodate their daughter's disabilities. Holding that the parents pleaded a valid claim for relief, the U.S. District Court, District of Pennsylvania denied the school's motion to dismiss the parents' Section 504 claim.

**What it means:** Section 504 applies to any school that receives federal funding, which could include private schools that received Paycheck Protection Program loans during the COVID-19 pandemic. This decision is one of the first to suggest that a private school's receipt of PPP funds can impose Section 504-related FAPE obligations retroactively. Here, the parents claimed they informed school administrators in 2019 that persistent peer bullying had caused their daughter to develop depression, anxiety, and an eating disorder. Although the school pointed out that its alleged child find violation predated the PPP loan, it still had to defend its failure to evaluate.

**Summary:** The fact that a Pennsylvania private school learned of a 10th-grader's mental health diagnoses long before it received a PPP loan did not shield it from the parents' Section 504 claims. Assuming without deciding that the school was a recipient of federal funds, the District Court denied the school's motion to dismiss.

U.S. District Judge John Milton Younge noted that Section 504, which entitles students with disabilities to FAPE, only applies to recipients of federal funds. As such, the judge explained, any obligation to provide FAPE generally falls on the student's district of residence as opposed to the student's private school. However, the judge pointed out that the school in this case received a federally funded PPP loan during the COVID-19 pandemic.

Although the school argued that it was not a recipient of federal funds at the time of the alleged Section 504 violations, Judge Younge declined to address the timing of the loans. Instead, the judge focused on whether the PPP loans qualified as "federal financial assistance" for purposes of Section 504. The judge determined that the parents' allegations about the school's receipt of federal funds were sufficient to withstand a motion to dismiss.

Judge Younge observed that the impairments identified in the complaint — depression, anxiety, and an eating disorder — qualified as disabilities under Section 504. Furthermore, the parents alleged that the school discriminated against the student when it failed to evaluate her or accommodate her disabilities.

"[The parents] point to specific instances where [they] explicitly requested that [the student] be separated from [the lead bully] due to her anxiety, requests that [the school] disregarded," the judge wrote. The judge explained that such allegations, if true, could support a finding that the school violated Section 504.

The judge did not address the merits of the parents' claims. ■

## Teen's questioning, discipline after gun-related comments don't violate 504

**Case name:** *Dolan v. Township High Sch. Dist. No. 214*, 124 LRP 31315 (N.D. Ill. 08/21/24).

**Ruling:** The U.S. District Court, Northern District of Illinois held that a district did not discriminate against a former high schooler with autism, ADHD, social anxiety, and learning disabilities when it allegedly questioned and disciplined him on multiple occasions. It dismissed the former student's Section 504 and Title II claim and his state tort claim.

**What it means:** Districts must ensure that their disciplinary practices and procedures don't inappropriately single out students with disabilities. That said, a district should have little to fear from federal disability discrimination claims as long as it has a legitimate reason for its disciplinary decisions. On at least five occasions during the school year, this district questioned and suspended a former high schooler. By highlighting that it took disciplinary action due to the former student's violent behaviors and purported shooting-related statements and not his disabilities, the district demonstrated that it didn't intentionally discriminate against him.

**Summary:** A former high schooler with autism and other disabilities may have felt targeted when an Illinois district repeatedly questioned and disciplined him, but he couldn't prove that the district's actions constituted intentional discrimination. Finding that the district had a legitimate reason for its actions, a District Court dismissed the former student's Section 504 and Title II claim.

To establish a viable intentional discrimination claim under Section 504 and Title II, the former stu-

dent had to show the district excluded him from participating in or benefiting from a service, program, or activity solely by reason of his disabilities. The former student failed to meet this standard, the court determined.

The court acknowledged that the former student “was indeed called to [a dean’s] office on multiple occasions.” However, there was no evidence that the former student was questioned or disciplined on the basis of his disabilities, the court noted.

On one occasion, the dean appropriately pulled the former student out of class to investigate a rumor that someone was planning to commit a shooting during the school’s homecoming bonfire or pep rally. Because a classmate specifically named the former student as the subject of the rumor, the dean’s actions were nondiscriminatory, the court observed.

It was also reasonable for the dean to question and suspend the former student when he was involved in two separate physical altercations and one school prank in which he pretended to be a teacher’s assistant.

Finally, the district acted appropriately when it questioned and suspended the former student after he allegedly made disturbing statements about guns and violence and making a bomb out of cell phone materials.

“The record shows that [the district] focused on [the former student] not because of his disability, but rather in response to student reports about him,” the court wrote. It dismissed the student’s discrimination claim. The court also dismissed the student’s state tort claim. ■

## Appropriate IEP won’t relieve Pa. LEA of funding obligations under stay-put

**Case name:** *Hatboro-Horsham Sch. Dist. v. R.C.*, 124 LRP 31317 (E.D. Pa. 08/22/24).

**Ruling:** A Pennsylvania district had to continue funding a middle schooler’s unilateral private placement while his parents appealed an impartial hearing officer’s finding at 124 LRP 31477 that his SY 2023-24 IEP was appropriate. The U.S. District Court, Eastern District of Pennsylvania granted the parents’ request for a stay-put order that required the district to reimburse the parents for the student’s SY 2024-25 private school tuition.

**What it means:** Just because a district develops an appropriate IEP for a student with a disability doesn’t mean it’s off the hook for the student’s private school costs. If an IHO previously determined

that the student’s unilateral placement was appropriate, the district likely will have to fund that placement for the duration of any appeals. This district highlighted the IHO’s finding that it offered the student FAPE for SY 2023-24. Because the IHO had approved the student’s private placement for the previous school year, however, the district’s stay-put obligations continued despite its development of an appropriate IEP.

**Summary:** An IHO’s finding that a Pennsylvania district denied a middle schooler FAPE in SY 2022-23 could prove expensive despite the district’s offer of an appropriate IEP the following school year. The District Court held that the IDEA’s stay-put provision required the district to fund the student’s unilateral private placement for SY 2024-25.

The IDEA’s stay-put provision requires a district to maintain a student’s current educational placement while a dispute over the student’s identification, evaluation, placement, or services is pending. In this case, the parents argued that the private school was the student’s current educational placement. The District Court agreed.

U.S. District Judge Harvey Bartle III pointed out that the IHO deemed the unilateral placement appropriate for SY 2022-23 and ordered the district to reimburse the parents for the student’s tuition. At that point, the judge explained, the private school became the

## 504 quick quiz

**Q:** Can district wait for medical documentation before conducting Section 504 evaluation?

**A:** No, a district’s duty to evaluate a student does not depend on the parents’ abilities or willingness to provide medical documentation. If the district knows or has reason to suspect that a student has a disability, it must conduct a full and adequate evaluation. *In New Haven (CT) Public Schools*, 67 IDELR 99 (OCR 2015), the Connecticut district refused to convene an eligibility meeting until the parent could produce medical documentation regarding her child’s multiple health conditions. The district ultimately relied on the medical information submitted by the parent in developing the student’s Section 504 plan. OCR concluded that the district violated Section 504 when it failed to timely evaluate the student’s needs and develop appropriate services. While a district may request medical information from a parent, it may not decline to evaluate a student or determine her eligibility based on the parent’s failure to provide such documentation, OCR highlighted.

student's current educational placement. The IHO's finding that the district developed an appropriate IEP for SY 2023-24 did not relieve the district of its stay-put obligations.

Judge Bartle recognized that the stay-put provision does not mention reimbursement for private school costs. Still, the judge determined that reimbursement for the upcoming school year was appropriate. "The parents are simply asking for the maintenance of the status quo ... until this court decides the issues before it," the judge wrote.

The judge thus determined that the student was entitled to remain at the private school for the duration of the parents' appeal. He ordered the district to reimburse the parents for their SY 2024-25 tuition payments to ensure that placement continued. ■

## Nurse's advocacy for students with diabetes unrelated to discipline

**Case name:** *Rae v. Woburn Pub. Schs.*, 124 LRP 31325 (1st Cir. 08/22/24).

**Ruling:** Affirming a District Court's decision at 83 IDELR 61, the 1st U.S. Circuit Court of Appeals held that a school nurse failed to establish causation between her advocacy for students with disabilities and a Massachusetts district's alleged discriminatory retaliatory conduct. She did not show retaliatory harassment in violation of ADA Title II and Section 504, the 1st Circuit concluded.

**What it means:** A discriminatory retaliation claim fails if there is no causal link between the protected activity and the adverse action. Here, a school nurse couldn't show she was subjected to "sham" disciplinary hearings in retaliation for her advocacy for students with diabetes. By pointing out that alleged adverse employment actions bore little relation to the nurse's advocacy, the district succeeded in getting her complaint dismissed. It successfully argued that two disciplinary hearings were unrelated to the nurse's attempts to obtain more and better services for students with diabetes and didn't rise to the level of severe and pervasive harassment.

**Summary:** There wasn't enough of a connection between a school nurse's advocacy for students with disabilities and for diabetes protocols and discipline to make a case for unlawful retaliation. Finding that the nurse failed to establish causation and lacked a viable claim, the 1st Circuit dismissed her complaint.

The nurse alleged that she was subjected to retaliation and harassment for over a decade, stemming

from her advocacy on behalf of students with disabilities and for a diabetes protocol. She appealed the dismissal of her retaliation claim at 83 IDELR 61.

To establish discriminatory retaliation in violation of ADA Title II and Section 504, the nurse had to show that she engaged in protected conduct, that she experienced an adverse employment action, and a causal connection between the two, the 1st Circuit explained.

First, advocating on behalf of students with disabilities "plainly constitutes protected conduct," it held.

Second, the nurse alleged unwarranted discipline, refusal to transfer, denial of promotion, and hostile work environment, which may constitute adverse employment action, the court observed. But a hostile work environment, tolerated by an employer, is cognizable as a retaliatory adverse employment action only if the harassment was sufficiently severe or pervasive, it explained. She didn't allege any misconduct in the two years following her protected activity, the court noted.

The two disciplinary hearings in the six months following the filing of her human resources complaint, although timely, were not sufficiently serious to constitute severe or pervasive harassment to support retaliatory harassment, it concluded.

Finally, one way of showing causation is to establish that the employer's knowledge of the protected activity was close in time to the adverse action, the court observed. However, it agreed with the District Court that the nurse failed to establish a causal connection. For example, she alleged that the district retaliated by ordering her to report for a disciplinary hearing the same day she filed an HR complaint regarding the principal's harassment. But she failed to plausibly allege the exact timing of events and the principal's purported knowledge of her protected activity, making it impossible to evaluate her conclusory allegation of causation, the court reasoned. ■

## Delays reasonable, not discriminatory, where scope of evaluation expanded

**Case name:** *Broward County (FL) Schs.*, 124 LRP 29248 (OCR 07/05/23).

**Ruling:** The Office for Civil Rights found that a Florida district did not discriminate against a student with an undisclosed disability by failing to evaluate him for special education in violation of ADA Title II and Section 504.

**What it means:** Delaying to evaluate or failing to respond to a request to evaluate discriminates against

a student with a disability. But a reasonable delay in the evaluation process may avoid a Section 504 violation. This district, for example, promptly made a phone call, following-up on the parent's referral, and initiated a special education evaluation upon her request. It established that it made several efforts to begin the IEP process, the teacher completed requested paperwork, and the district expanded the evaluation plan to include other areas of need. It showed that any delays were attributable to both the district and the parent and were reasonable.

**Summary:** A Florida district did not discriminate against a student with an undisclosed disability by delaying or failing to evaluate him in response to his parent's request. OCR found no violation as any delay was reasonable.

A teacher requested a meeting with the parent because the student's behavior deteriorated and he received a disciplinary referral. The parent shared that the student was being evaluated for a disability. She requested that the teacher complete related paperwork and requested a special education evaluation. The principal contacted the parent and told her where to send her request.

The parent alleged that the district discriminated based on disability by denying the student had a dis-

ability and failing to evaluate him.

ADA Title II and Section 504 prohibit districts from discriminating against students based on disability, OCR explained. They must afford students with disabilities an opportunity to participate in or benefit from their aids, benefits, or services equal to that afforded to their nondisabled peers, it added. And, they must evaluate any student who, because of disability, needs, or is believed to need special education or related services.

OCR noted that the principal followed up on the parent's request for an evaluation, by phone, a few days later and directed where to send her request. The parent followed the instructions, OCR pointed out, and the school made several efforts to contact her to begin the process, OCR observed. Additionally, the school agreed to expand the initial evaluation to include additional areas of suspected need, which delayed the process, OCR found.

While brief delays occurred in the process, on the part of the parent and the district, the district did not unreasonably delay evaluating or fail to appropriately evaluate the student, OCR concluded. It also found insufficient evidence that the district discriminated by delaying to fill-out paperwork required for the student's physician. ■



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