

Section 504 COMPLIANCE ADVISOR

ROUTE TO	

Your Guide to Understanding and Administering Section 504

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Walk line between limited communication, retaliation under 504

A parent of a student with a disability has a pattern of harassing staff members with profanity. Before you limit this parent's communication or access to school staff, ask if this action could pass muster in light of Section 504's anti-retaliation provision.

This provision prohibits acts that intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any rights that she has under Section 504. Within these rights is protection against retaliation for those who complain of unlawful discrimination in violation of Section 504 on behalf of an individual with a disability. OCR enforces these rights.

To proceed with a retaliation claim, a complainant must establish a causal relationship between the protected activity and the adverse action. The Office for Civil Rights and the courts will typically use a multistep analysis:

1. The complainant engaged in a protected activity.
2. The complainant suffered an adverse action around the same time (within a reasonable amount of time).
3. The district was aware of the complainant's protected activity.
4. There is evidence of a causal connection between the protected activity and adverse action.

Once the complainant meets the burden of proof, OCR will consider whether the recipient has identified a legitimate, nondiscriminatory reason for taking the adverse action.

Educators must recognize situations where limiting the amount of communication and access parents can have with school staff members is a common trigger for retaliation claims. Review these examples of retaliation claims and how districts responded to them.

Document inappropriate behavior

Any adverse action taken against a parent engaging in a protected activity, such as by asserting her child's IDEA or 504 rights, can result in a retaliation claim. But when a district documents the reasons for the adverse action and ensures that the parent can still meaningfully advocate, it has the potential to minimize potential liability.

In *Camfield v. Board of Trustees of Redondo Beach Unified School District*, 75 IDELR 59 (9th Cir. 2019), a California district did not violate Section 504 or the ADA by requiring the mother of a student to seek permission from the elementary principal before entering campus. The district documented the parent's use of profanity and repeated questioning of the student's

(See **COMMUNICATION** on page 3)

Did Mass. district ‘take back’ 504 plan to punish mom for advocacy?

A Massachusetts district convened a Section 504 meeting for a fifth-grader diagnosed with anxiety and PTSD. The student’s private therapist, who said she would provide a diagnosis letter for the district’s records, attended the meeting.

After the parent refused to sign the 504 plan, the district sent two revised versions that corrected previous errors and included several of the parent’s requested changes. It also contacted the student’s therapist to follow-up on the promised diagnosis letter. The parent did not consent to any version of the plan, and the district did not provide the student with accommodations.

The parent filed for due process. She claimed the district “[took] back” the 504 plan and demanded additional information to punish her for requesting changes. The district pointed out that it proposed three Section 504 plans for the student despite the lack of medical documentation and argued that it could not implement the plans without the parent’s approval.

Section 504 prohibits districts from retaliating against individuals for exercising their rights under the statute, including the right to FAPE. 34 CFR 104.61 (incorporating 34 CFR 100.7(e)).

Did the parent establish unlawful retaliation?

A. No. The district could not provide the accommodations in the student’s proposed plan without the parent’s signature.

B. Yes. The district improperly conditioned the student’s Section 504 plan on the parent’s submission of medical documentation.

C. Yes. The district could have implemented the student’s Section 504 plan without the parent’s approval.

How the independent hearing officer ruled: A.

The student’s lack of accommodations stemmed from the parent’s failure to sign a Section 504 plan, not from any action by the district. *Dracut Pub. Schs.*, 123 LRP 30469 (SEA MA 09/29/23).

The impartial hearing officer noted that districts cannot wait for parents to submit medical documentation of a disability before evaluating a student and developing a Section 504 plan. However, the IHO pointed out that the district developed three Section 504 plans for the student before receiving any medical documentation from the student’s therapist. “The district kept amending (and reproposing) the 504 plan in accordance with parent’s requests and remained ready to implement any accepted plan,” the IHO wrote.

The IHO acknowledged that Section 504 does not expressly require a parent’s signature on a 504 plan. That said, OCR has advised districts to obtain a parent’s consent for the initial provision of services under Section 504. Given the student’s continued participation in all of her classes, the IHO determined that the district’s insistence on a signature — even if not required — was harmless.

B is incorrect. The district developed three Section 504 plans for the student before it received the diagnosis letter from the student’s therapist.

C is incorrect. Although Section 504 does not expressly require the parent’s approval, OCR has advised districts to get the parent’s signature on a 504 plan. *See Richland County (SC) Sch. Dist. Two*, 108 LRP 63017 (OCR 05/22/07).

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

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COMMUNICATION (continued from page 1)

aides. It also showed that the restrictions did not prevent her from entering school grounds.

Apply rules to all parents

When limiting communication between parents and staff, districts should take steps to show that it is doing so in a nondiscriminatory manner. If a district can demonstrate that it applies these restrictions to both parents of children with disabilities and parents of nondisabled children, it may improve its chances of overcoming a retaliation claim.

In *Adams County (CO) School District*, 51 IDELR 167 (OCR 2008), a district applied communication restrictions to several parents whose correspondence allegedly became disruptive. This included three parents who were not advocating on behalf of a student with a disability. OCR recognized that the restriction curbed the communication the parent of a student with a disability

had with the district. However, there was no evidence that the restriction was linked to the parent's advocacy.

Differentiate advocacy, harassment

Although a parent may seem demanding and even accusatory during IEP meetings, districts should be cautious about taking adverse actions that could be seen as retaliatory, given the circumstances.

In *Hampton (VA) City Schools*, 68 IDELR 232 (OCR 2016), OCR acknowledged that if an activity is so disruptive and excessive that it interferes with the functioning of the IEP process, it is not protected. The Virginia district violated Section 504 when it retaliated against a parent, saying that she made demands to schedule IEP meetings outside of work hours and made meetings uncomfortable. Through its investigation, OCR found that both IEP meetings accomplished their respective goals. While the parent's demands concerning IEP meetings were not practical, there was no evidence that they were disruptive or excessive. ■

What's in my bag? Essential documentation to bring to 504 meetings

New Section 504 coordinators may find they don't know what documentation is necessary to bring to a Section 504 meeting. A veteran special educator can help with that.

First, make sure the parent has provided written consent for the Section 504 evaluation and has been provided with a notice of their parental rights, said Theresa Griffin-Golden, director of secondary special services and 504 compliance officer for Rio Ranch Public Schools in New Mexico. Have a copy of that consent.

Initial 504 evaluation meeting

Which reports and district- or state-approved 504 forms you'll need to include in your meeting folder will depend on the unique needs of the student referred for evaluation, said Griffin-Golden. Use this non-exhaustive checklist to keep track of the essential documentation.

Initial 504 evaluation meeting documents

Educational records

- Language proficiency data.
- School history and attendance data.
- Early intervention and alternative programs data (English as a second language and bilingual program, Title I, pre-school, tutoring, counseling and mentoring, summer school, student assistance team, gifted and talented, alternative educational setting, etc.)
- School grades.
- District- and state-mandated assessment data.
- Discipline data.

Health information, vision-hearing screening reports

Mitigating measures currently used by the student or provided for the student's benefit include but are not limited to the following:

- Medication.
- Medical supplies or equipment.
- Low vision devices (not including ordinary eyeglasses or contact lenses).
- Prosthetic limbs and devices.
- Hearing aids and cochlear implants or other implantable hearing devices.
- Mobility devices.
- Oxygen therapy equipment and supplies.
- Assistive technology.
- Reasonable accommodations.
- Auxiliary aids or services.
- Learned behavioral or adaptive neurological modifications.

Teacher(s) input

Information regarding the student's:

- Strengths and needs in the areas of academic skills.
- Work and study habits.
- Behavior.
- Interventions attempted and their effectiveness.

Parent input

Information regarding:

- Guardianship information.
- Who the student lives with.
- Others living in the home.
- Developmental milestones.

- Sibling and peer relationships.
- Recreation and leisure activities.
- Family history of disability.
- Significant changes in the family in the last three years (job changes, moves, births, deaths, serious illness, separations, divorce, etc.)
 - Description of any routines at home (bedtime, breakfast, etc.)
 - Discipline at home.
 - Parent's insight into any problems or difficulties at school.
 - Health history.

Community provider(s) input

Information with a signed release regarding any disability or diagnosis on the severity of:

- Any medications prescribed.
- Limitations of disability on student's educational performance.
- What the school can expect in terms of school attendance.
- Reasonable timeline to make up missed assignments.
- If the medical issue would result in the student missing 10 school days or more (consecutively or cumulatively) due to the disability.

504 annual reviews, reevaluation

Section 504 requires districts to establish procedures for periodic reevaluations of eligible students. A re-

evaluation procedure consistent with the IDEA is one means of meeting this requirement. 34 CFR 104.35(d). The IDEA mandates that districts review IEPs periodically but no less than annually. 34 CFR 300.324(b)(i). It also requires that a reevaluation may not occur more than once a year unless the parent or district agree otherwise. Reevaluations must occur at least once every three years unless the parent and district agree that a reevaluation is unnecessary. 34 CFR 300.303(b).

The following documentation may be helpful to bring to a periodic 504 reevaluation meeting.

504 annual, intermittent review, reevaluation

Teacher(s) input

Information regarding the student's:

- Strengths and needs in the areas of academic skills.
- Work and study habits.
- Behavior and any interventions attempted and their effectiveness.

Updated parent input

Information regarding any of the following areas of concern:

- Attendance.
- Grades, academic performance, or homework.
- District and state assessments.
- Discipline.
- Health, behavioral issues, or social-emotional well-being. ■

Iron out wrinkles between IDEA, Section 504 before disciplining 504 students

Two middle school students get into a fight on the bus. The alleged instigator, who has been in two other fights this year, has a Section 504 plan, and the school principal wants to suspend him for 14 days. Can she?

It depends.

Although discipline is generally the same under both the IDEA and Section 504, there are certain aspects that districts should be aware of when removing a student with a 504 plan from their educational placement through short-term or long-term suspension.

One way to confirm that your district maintains legal compliance when disciplining a student with a 504 plan is to follow the IDEA process procedures, said attorney Catherine Lyons of Lyons Law Group, LLC, in Rockland, Mass.

"If you follow those same procedures, you're going to be giving the students who are eligible under 504 the additional due process protections to ensure that

they aren't discriminated against in terms of the disciplinary process and disciplinary procedures under 504," she said.

Complying with the IDEA's discipline rules may not resolve all 504 compliance issues, though. See some additional concerns that districts may need to smooth out when considering discipline for a student with a 504 plan.

Drug abuse

Students actively using illegal drugs are not entitled to disciplinary protections under Section 504. *See Protecting Students With Disabilities: Frequently Asked Questions About Section 504 and the Educ. of Children with Disabilities*, 121 LRP 5510 (OCR 01/10/20). Under the IDEA, a student can be removed to an interim alternative educational setting if he knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at

school, on school premises, or at a school function. 34 CFR 300.530(g).

While 504 regulations don't mention IAES and don't require a manifestation determination review if a student with disabilities possesses contraband, Lyons would advise her clients to still follow due process protections under the IDEA and conduct a manifestation determination review. Parents could make the argument that the student is in recovery or not actively using drugs, she said.

"The safest course of action is to follow those additional [IDEA] due process protections. They are designed to ensure that students with disabilities aren't going to be improperly suspended from school for conduct that was caused by or substantially related to their disability," she said.

State law specifics

Students with IEPs removed from their current placements for 10 school days are entitled to continue to receive FAPE and educational services outlined in their IEP. 34 CFR 300.530(d). For a student suspended 10 days or less in a school year, the IDEA does not require the continuation of educational services. 34 CFR 300.530(d)(3).

Section 504 does not account for whether students may or may not receive services after a disciplinary removal, such as a suspension. But 504 teams still need to pay attention to state student discipline laws that apply to all students. These laws may include requirements that provide suspended students with the opportunity to make academic progress. For students with 504 plans who may receive counseling or related services, teams will need to determine how to approach those on a case-by-case basis depending on state law, Lyons said.

State law will often dictate what services a student who is suspended from school will be entitled to receive, Lyons said. In Massachusetts, students who are suspended from school are entitled to services under an educational services plan, even those without disabilities, she said.

"I think the safest course of action would be for schools to figure out, depending on the nature of the student's 504 plan, what, if any, services they're going to make available to that student. I would advise my clients to err on the side of offering to provide those services. But it's not clear under 504 if that's required," she said.

Notice

The IDEA has procedural safeguards concerning notice. This includes whenever the district proposes a disciplinary removal for the student. 34 CFR 300.504(a) and 34 CFR 300.530(h). Under Section 504, procedural safeguards must include notice as well, but without explicit mention of a disciplinary change in placement. 34 CFR 104.36.

A misstep districts may find themselves in is not giving proper notice of due process rights when deciding to discipline a student with a 504 plan, said Lyons.

When administrators have so much on their plate and are trying to move quickly, especially if it's a serious disciplinary issue, it's important to remember to include the proper elements in their notice letters. Remember to provide notice of what the conduct was, what the 504 hearing process looks like, whether there will be an MDR, and what that entails, Lyons said. Also, include what the parents' rights are for the MDR and appeal. Include a notice of the student's rights under 504, she said. ■

Weigh solutions when school attendance problems are readily 'a-parent'

School avoidance comes in different forms. Sometimes, it's student-driven — maybe Sam would rather play video games or stay home all day with a doting grandparent. Other times, the parents struggle to get the student to school for personal reasons.

When parents play a part in the absences of students with IEPs or Section 504 plans, districts should examine what they can do to provide support. Investigate whether parent-driven attendance issues could be remedied on a school level or require concrete strategies like parent training services and other solutions described below.

Perform systems check

Before jumping to give parents support, make sure the school system is conducive to school attendance, said Dr. Jessica Dirsmith, clinical assistant professor of the school of psychology from Duquesne University, in Pittsburgh, Pa.

Analyze data on school nurse visits, tardies, academic performance, and discipline referrals, she said. Also, consider whether social-emotional screeners could help to identify students with risks of internalizing or externalizing behavior problems.

Ensure that school is a physically and emotionally safe environment for students and that students feel like they belong. Do this through a school climate survey where students and parents can give feedback, said Dirsmith.

“It’s looking at indicators to determine whether absenteeism is a problem here. We’re fixing any system-level issues to make them more conducive,” she said.

Dig deeper into attendance issue

There may be different reasons that parents have trouble getting their children to school, said Dirsmith. For example, the parent may have anxiety about sending the student to school or feel the student needs to take care of younger siblings.

If a parent struggles with mental health issues or a substance use disorder, they may have a hard time consistently waking the student up in the morning in time to get to school, she said.

Some parents may keep their child from school to conceal maltreatment, she said. A district may need to call child protective services in these situations.

With parent-driven attendance problems, it’s recommended that the district work with the parents to assess what the need is and provide that level of support, said Dirsmith. Often, schools will have designated staff to do home visits to assess the situation. This could be a social worker, school psychologist, or a principal.

Higher levels of need may warrant more complex social services or community support, she said. School

responsibilities regarding truancy laws will vary by district and state.

Develop concrete strategies

School attendance problems are usually an indicator that the student or family is struggling with something else, said Dirsmith. While universal supports for school attendance are helpful, some families may need a higher level of support to maintain regular attendance.

If a parent is having a hard time getting up in the morning, one strategy the school can try is increasing the autonomy of the child. This can be done through a simple alarm clock that the child knows how to set and fix if the power goes out, Dirsmith said.

Another strategy is to work with the parents to prepare lunches and backpacks the night before so the student can grab it on his way out. Students with certain disabilities or of certain ages may not be able to acquire this level of autonomy.

Consider that the parent may not know how to set limits for the child. Dirsmith said family-based counseling services or parent training services may help here.

Incentivize family

Some children or families may respond to incentives to improve school attendance, she said. Motivate students to attend school by developing an attendance intervention plan. Students can select an incentive item and earn points toward it, Dirsmith said. ■

Plan to pivot when students with ADHD are affected by medication shortage

In August 2023, the Federal Drug Administration recognized the frustration that the shortage of medications used to treat ADHD has caused for patients and families. Even before the letter from the FDA, medications like Adderall, Concerta, Focalin, and Ritalin had been in short supply to those who had been prescribed the medications and consistently took them.

The shortage continues to impact students who may have acclimated to medications over a long period of time. All the medication uncertainty has left districts unsure of how students with ADHD may respond on a day-to-day basis in a school setting.

The IDEA precludes districts from conditioning a student’s eligibility on their willingness to take medication. 34 CFR 300.174(a). Similarly, the ADA precludes consideration of mitigating mea-

sures. *See Dear Colleague Letter*, 68 IDELR 52 (OCR 2016).

At any point in time, a parent could choose to not pursue ADHD medication for their child. “We cannot require or mandate that students take medication. Before ADHD and after ADHD, there will always be a need for schools to have good behavior support, instructional strategies, and planning for educational approaches and content to build towards the success for all learners,” said Tara L. Moffet, a partner with Girvin & Ferlazzo PC in Albany, N.Y.

Districts must be prepared to adapt to the needs of students with ADHD, whether they take medication or not. They should know how to address changes in medication that students may experience and the consequent challenges that may result in individualized support.

Supports for students

There are numerous ways to support students with ADHD, whether it manifests as disorganized, hyperactive, or impulsive. Different approaches will depend on how the ADHD presents for that student with or without medication, said Moffet.

For students with IEPs or Section 504 plans in effect, districts may need to revisit current accommodations, supports, or strategies when changes in medication occur. This could include increasing brain breaks to allow such students to regulate their thoughts or giving students intensive movement breaks to release energy, recenter, and refocus on work, she said.

Other times, students with ADHD need extra structure and scaffolding, Moffet said. She suggested moving the students to a different location in the classroom if they are too distracted by peers. This could be closer to the teacher where the student can get additional support or near a peer model less likely to distract them, she said. Students may also require more reinforcement or check-ins to stay on track during learning and activities.

Moffet described common scenarios schools encounter with regard to students with ADHD and how to approach issues related to medication.

Student stops medication

When a student loses the support that medication may have been providing internally, districts will need to address how to provide that support externally, said Moffet. This can be provided through additional structure in the day, clear directions, more prompting, extra modeling, guidance, reinforcement, behavioral tokens, and other plans.

For students who continue to struggle, districts should consider developing a functional behavioral assessment to determine if an individualized behavioral intervention plan with targeted intervention is necessary, she said.

“This attempts to control the antecedents that may contribute to the students engaging in more problematic, disruptive, disoriented, disorganized types of behaviors,” she said. “Our goal is to figure out how to help them persevere through whatever learning challenges they may have as a result of less controlled ADHD symptoms.”

Student’s dosage changes

If a student begins taking a new dosage of medication, there may be a period of two to four weeks when the medication is adjusted before it hits efficacy, said Moffet.

Get a release to speak with the child’s medical provider to find out how the different dose may affect the student. For example, if a child was previously on an extended-release medication, a lesser dose may not last the entire school day. This may leave the student with a sunset period where there’s a difference in performance or response by the end of the day.

Student changes medication

Some students may switch medications, said Moffet. For example, a student taking Adderall may switch to Concerta as both are central nervous system stimulants.

When a student goes on a new medication, districts should maintain good communication with parents and/or the treatment team to observe and report on any changes in a student’s performance or behavior, she said.

Districts may need to have more flexibility with students during this trial period. Some medications may cause symptoms to worsen. The district should report any increase in problematic behaviors or rise in irritability to the parents or medical team, she said. The same should be said for a positive response so that they know the new combination is having a good impact. ■

Meeting framework helps 504 teams form, sustain positive parent-school relationships

Parents who advocate for support for their children under Section 504 may do so without understanding what the regulations mandate. Carelessly fielding parents’ questions about 504 services can sometimes lead to unproductive, contentious meetings.

“If parents trust you, they know that you have a student’s best interests at heart, and they’re willing to work with you,” said Watina April, district Section 504 coordinator for DeKalb County School District in Lithonia, Georgia.

Districts can address parent concerns early and establish trusting relationships with parents by following a 504 meeting framework. While Section 504 does not mandate that parents are required members of a 504 team, the IDEA does require them for IEP teams. 34 CFR 300.321(a)(1). Section 504 regulations state that one way of meeting the standard of FAPE is compliance with IDEA procedural safeguards. 34 CFR 104.33(b)(2). This includes instructing district team members on cus-

tomers-service-based communication, where parents are heard, have their rights explained, and are made to feel important. Make your next 504 meeting more productive while reminding parents they are part of the process.

Share form

To facilitate obtaining the parents' perspectives, provide them a parent input form, either prior to or at the beginning of the meeting, for them to list concerns about the student's impairment, April said. The parents understand when coming into the meeting that the district wants the full picture of the student. When reviewing the form in the meeting, start with the student's strengths, she said.

As the team moves through the process in the meeting, return attention to the parents to make sure they understand. Ask how they're feeling about what's going on.

"When we're walking through the accommodation plan, the parents are watching as the 504 chairperson words the accommodations, and they may have some concerns or input to add," she said.

Frame expectations

At the beginning of the meeting, whether it's in-person or virtual, the 504 chairperson should remind participants of meeting norms. For April's district, meeting norms include acting respectfully, being engaged, speaking in a neutral tone, answering

questions, and offering input from everyone present. Some virtual expectations are that cameras are on and participants are attentive.

"Whether it's in person or virtual, we have to stick to our norms and ensure that we are involving all voices intentionally," April said. This means regularly calling on parents in the meeting so that they know their voices matter.

Remind parents that if they have a concern outside of the scope of the meeting it will be addressed in the future. Then, in view of the parents, add the concern to a "parking lot," which is sometimes a piece of paper or poster board where concerns are recorded, April said. In a virtual meeting, the 504 chairperson could share their screen to show that the concern is heard and received.

Take breather

Before a disagreement turns into a full-blown conflict, it's helpful for 504 facilitators to know when a meeting should be paused so that a district representative can step in, said April. A district representative can sometimes provide a different way of working with parents that may be able to deescalate a situation, answer a question, or provide a different perspective.

"If the meeting is not productive for our students due to contention, our 504 chairs know that they have the power to table a meeting for that day," she said. ■

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5 signs you need to reevaluate 504 student

A district must reevaluate a student under Section 504 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. 34 CFR 104.35(d). This chart highlights five of the most common situations that indicate the need to reevaluate a child.

Reason	Explanation
1. Increased behavioral problems	<p>A student's worsening or new behavioral challenges may trigger the need to reevaluate, especially if:</p> <ul style="list-style-type: none"> The student has existing behavioral interventions which school staff are consistently implementing. The behavior interferes with the student's ability to learn or with the learning of other students. The behavior impacts the safety of the student, other students, or staff members.
2. Sudden decline in grades	<p>If a student's grades dramatically decline, that may signal that a reevaluation is needed. The district should consider:</p> <ul style="list-style-type: none"> The degree of the change in grades. Whether the poor grades coincide with a recent medical or mental health diagnosis. Whether the change in grades coincides with the student's changed behavior. Whether the change coincides with recent bullying of the student.
3. Excessive absenteeism	<p>If a student is missing school often, the district may need to reevaluate to determine whether the student needs new or revised accommodations or services. Districts should consider whether:</p> <ul style="list-style-type: none"> The absenteeism coincides with a new medical or mental health diagnosis. The absences are negatively affecting the student's grades. Discussions with the parent concerning improving the student's attendance have not worked.
4. Bullying	<p>If a student has been bullied, there may be a need to reevaluate. This is especially the case if the bullying results in:</p> <ul style="list-style-type: none"> A dramatic change in behavior. A significant drop in academic performance. New mental health concerns. Excessive absenteeism.
5. Disciplinary change of placement	<p>A district must reevaluate by conducting a manifestation determination review if it proposes to significantly change a student's placement for disciplinary reasons. This occurs when the district proposes to subject the student to:</p> <ul style="list-style-type: none"> More than 10 consecutive days of disciplinary removal. A series of shorter suspensions that cumulatively exceed 10 school days during the same school year and that form a pattern. ■

District lacks process for providing ASL interpreters for IEP meetings

Case name: *Cleveland Heights-Univ. Heights City (OH) Sch. Dist.*, 122 LRP 43225 (OCR 07/05/22).

Ruling: An Ohio district resolved with OCR allegations that it discriminated in violation of Section 504 and ADA Title II by failing to provide effective communication to a parent with deafness. It committed to reschedule IEP meetings for the parent's children with undisclosed disabilities that were not held or were held without effective American Sign Language interpreter services. It also agreed to develop policies and procedures to provide effective communication and respond to requests for communication services from parents with disabilities.

What it means: Districts must provide effective communication to individuals with communication disabilities. Here, the district failed to coordinate ASL interpreter services for a parent with deafness, so the parent missed information about children with disabilities, missed IEP meetings, or was prevented from meaningfully participating in meetings. The district needs to have consistent procedures in place for responding when parents with disabilities request communication services and ASL interpreter services. That process needs to be coordinated by a designated employee, rather than differing depending on the location for the accommodation or the staff attending.

Summary: An Ohio district resolved concerns that it failed to provide effective ASL interpreter services to the parent of children with undisclosed disabilities. The parent is deaf and communicates using ASL. Otherwise, the parent needs an interpreter or Video Relay Service. A complainant contacted OCR alleging the district failed to effectively communicate with the parent by not responding to emails and not providing a qualified interpreter when needed. The parent told OCR that the school principal wasn't comfortable communicating using VRS and the parent therefore missed school information that other parents without disabilities regularly receive. The parent asserted the district didn't provide an effective interpreter at parent-teacher conferences or IEP meetings. OCR noted that, on one occasion, when an interpreter didn't show up, a conference was held with the assistance of the district ASL teacher and closed captioning. And, it combined parent teacher conferences and IEP meetings for two children in one meeting and not all teachers attended. Districts may not discriminate against or exclude individuals from participating in its programs and activities based on disability under Section 504 and ADA Title II, OCR explained. They must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others, OCR added. That includes furnishing appropriate auxiliary aids and services where

necessary. OCR noted documentation evincing the parent's numerous requests for ASL interpreter services for parent teacher conferences and IEP meetings. OCR expressed concern that responses to those requests didn't follow a consistent procedure or process and required the parent to make repeated requests, creating barriers to access effective communication. Moreover, there was no public notice about how to request ASL interpreter services. OCR remarked that the district may lack a process for requesting and providing services to ensure effective communication, including interpreter services. The district agreed to resolve OCR's concerns. ■

Pupil's frequent absences, skipping call for 504 evaluation, supports

Case name: *Pleasant Valley (IA) Cmty. Sch. Dist.*, 123 LRP 32117 (OCR 06/28/23).

Ruling: An Iowa district may have violated its child find duty under Section 504 and ADA Title II when it failed to timely evaluate a student with a medical condition. To remedy OCR's concerns, the district pledged in a resolution agreement to implement a system of procedural safeguards and conduct staff training.

What it means: School officials should keep a close eye on students who are frequently truant or absent from school. Because a student's chronic absenteeism may be a sign of a disability, such absences may trigger the district's duty to evaluate the student's eligibility under Section 504. When this student's frequent absences began impacting his grades, school officials should have immediately

504 quick quiz

Q: Can staffing considerations be factored into evaluation processes?

A: No. When it comes to evaluating students and making decisions about placements, districts' staffing needs and concerns may not influence the process. In *Cheatham County (TN) School District*, 116 LRP 21773 (OCR 12/21/15), OCR explained that a school principal should not have decided that his district could not provide diapering services for a student with a colorblind impairment based on staffing shortages. OCR emphasized that, under 34 CFR 104.35(c), a district must consider information from a variety of sources in making placement decisions and that these decisions include whether a child needs related aids and services. The principal should not have made the decision based on staffing shortages or without hearing from other members of the team. In resolving the issues that OCR found, the district agreed to publish its 504 policies on its website and conduct staff training.

referred him for an evaluation. Had the district timely completed the evaluation and developed a 504 plan, it may have eliminated the student's chronic absenteeism and improved the student's ability to catch up on his classwork.

Summary: An assistant principal's purported statement that an Iowa district could provide "zero accommodations" to address a student's chronic absenteeism caught the attention of OCR. Although the district may have shirked its duty to evaluate the student, OCR closed its investigation once the district entered into a resolution agreement. Under Section 504 and Title II, a district has an affirmative duty to locate, identify, and evaluate all students who need or may need special education or related services due to a disability. OCR expressed concerns that the district violated this child find duty. OCR observed that the student would frequently skip class, leave class early, or skip school entirely, and this chronic absenteeism negatively impacted the student's performance. The parent provided medical documentation recommending specific accommodations and requested a 504 evaluation. While the district offered the student tiered interventions, it likely failed to timely evaluate the student, OCR determined. It noted that an assistant principal allegedly told the parent, "there are zero accommodations we can provide that can assist with [the student's] poor attendance." The AP also allegedly said, "I will not be able to continue allowing [the student] to remain on his schedule if he is unwilling to come (and stay) in school." OCR acknowledged that the district had trouble evaluating the student due to his constant absences from school. However, it expressed concerns that the district never considered accommodations or modifications to incentivize the student to attend school. OCR also highlighted that the district never considered "alternatives to in-person support." Before OCR could make a compliance determination, the district executed a resolution agreement to address the potential child find violation. There, it pledged to develop a system of procedural safeguards, conduct staff training, and convene the student's Section 504 team if he reenrolled in the district. ■

Arbitrary limit on 504 support sparks implementation, FAPE concerns

Case name: *Liberty Hill (TX) Indep. Sch. Dist.*, 123 LRP 32117 (OCR 06/28/23).

Ruling: OCR expressed concerns that a Texas district may have failed to properly implement the Section 504 plan of a student with an undisclosed medical condition. To remedy the potential FAPE violation under Section 504 and ADA Title II, the district pledged to conduct staff training and provide the student any necessary compensatory services.

What it means: Teachers and school administrators may not unilaterally decide when or how frequently a

student receives Section 504 accommodations in class. Even if an educator doesn't believe a specific accommodation is necessary, she must continue to faithfully implement a student's 504 plan until the multidisciplinary team makes changes. The assistant principal and the student's teachers should have double-checked the 504 plan to determine how often the student could receive an accommodation in class. Had they brought their concerns to the multidisciplinary team instead of arbitrarily limiting the frequency of the student's 504 accommodations, they could have avoided the OCR investigation.

Summary: Emails in which an assistant principal told teachers that a student's Section 504 accommodations "should be used sparingly" created legal headaches for a Texas district. Although the district may have denied the student FAPE under Section 504 and Title II, OCR closed its investigation once the district executed a resolution agreement. Under Section 504 and Title II, a district has a duty to provide FAPE to all eligible students with disabilities in its jurisdiction. To comply with this FAPE requirement, the district must implement the accommodations and supports outlined in the student's Section 504 plan as written. The district here likely violated this requirement by failing to properly implement the student's 504 plan, OCR determined. Under the 504 plan, the student was entitled to related services and accommodations in each of his classes. Despite this, the evidence showed that several teachers may have denied the student's requests for an unidentified accommodation during the fall semester. OCR acknowledged that when the father reported the alleged implementation failure, an assistant principal sent an email instructing teachers to provide appropriate 504 accommodations "if needed." However, it highlighted that in the same email, the AP improperly stated that the use of accommodations "should not be a frequent occurrence and should be used sparingly." "It appears the assistant principal may have limited the implementation of [the student's] accommodation by instructing teachers to allow it only sparingly," OCR wrote. Before OCR could complete its investigation, the district resolved the potential FAPE violation through a resolution agreement. The district pledged to provide the student any necessary compensatory services if he reenrolled in the district. It also promised to train all relevant middle and high school personnel on its obligation to provide FAPE, including the duty to implement all provisions of a student's educational plan. ■

Gaps in 504 plan suggests child went without new accommodations

Case name: *Frederick County (MD) Pu. Schs.*, 123 LRP 32273 (OCR 05/15/23).

Ruling: OCR identified concerns that a Maryland district may have failed to consistently implement the 504 plan of a student with a medical condition. The district voluntarily resolved to convene the child's 504 team to determine whether the district failed to implement the plan and, if so, to determine the child's need for compensatory services.

What it means: When a 504 team seeks to provide a student additional accommodations, it should promptly revise the 504 plan to include those new accommodations and distribute the plan to staff. It may be prudent to also informally notify staff of the new accommodations, as this district did. If the district fails to also revise the 504 plan, however, the accommodations' absence from the plan could persuade OCR that staff didn't consistently implement them. This district's failure to add new medically related accommodations to a child's IEP raised questions about whether staff consistently implemented them.

Summary: A district's failure to formally add new accommodations to the 504 plan of a child with a medical condition bolstered a mother's claim that staff members may not have always provided them. In a highly redacted Letter of Findings, OCR stated that it was concerned that the Maryland district may have failed to consistently implement the plan in violation of Section 504 and Title II of the ADA. OCR stated that Section 504 requires a district to provide FAPE to a student with a disability, including by fully implementing the student's 504 plan. OCR noted that, according to the district, when it revised the student's 504 plan, it failed to include certain new health-related accommodations. The district, OCR observed, indicated that it nevertheless communicated those requirements to its staff members who worked with the student. The parent, however, alleged that the district engaged in implementation failures that caused the student harm on multiple occasions, OCR stated. Based on these allegations and the fact that the 504 plan was incomplete, OCR expressed concern that the district may not have been providing all the required accommodations. OCR stated that the district could resolve the complaint by taking the steps outlined in a resolution agreement. Those steps include determining whether school staff failed to fully implement the 504 plan and whether the student required compensatory services as a result. ■

D.C. fails to make good on promise to make-up teen's missed services

Case name: *District of Columbia (DC) Pub. Schs., 123 LRP 32291 (OCR 05/16/23).*

Ruling: The District of Columbia resolved with OCR concerns that it failed to fully compensate a teen with

an undisclosed disability for missed IEP services. OCR found insufficient evidence of discrimination in violation of ADA Title II or Section 504. It will monitor the district's implementation of a resolution agreement.

What it means: A district doesn't deny a student FAPE under Section 504 by changing the location of his services as long as those services continue to meet his disability-related needs. This district made an appropriate placement decision, but confusion over a change in location caused a teen to miss services for 30 days. To the district's credit, it acknowledged the gap in services; however, it failed to provide the compensatory instruction it offered. It might have avoided litigation and claims of discrimination had it abided by its offer and assigned staff to track that compensatory services agreement was fully implemented.

Summary: The District of Columbia failed to make-up the IEP services a teen with an undisclosed disability missed while enrolled in the wrong school for the first 30 days of the school year. The parent alleged that she didn't receive letters from the district informing her that it discontinued the teen's program and changed the location of services to another high school. Accordingly, she didn't enroll the teen in the high school identified in his IEP. Then, she contacted OCR alleging that he didn't receive services outlined in his IEP during the first 30 days of school. OCR explained that ADA Title II and Section 504 prohibit districts from discriminating against students with disabilities. Districts must provide students FAPE by way of special education designed to meet their needs as adequately as it meets the needs of nondisabled students, it added. OCR noted that the parent didn't disagree with the underlying substantive placement decision, but rather the location of services. The district identified the appropriate program and placement based on the teen's individual disability related needs, OCR found. Nevertheless, the teen didn't receive all of the services required by his IEP during the first 30 days of school, it determined. And, there was no evidence that transportation services were provided, OCR pointed out. The district acknowledged that it didn't fully provide the teen's services because the parent didn't enroll him at the identified school as directed by its location of services letters. To address the service gaps, the district committed to providing compensatory instruction to fill the gaps; however, to date, it hadn't completed providing the compensatory services, OCR observed. Accordingly, OCR had concerns that the district failed to provide some related services and transportation and hadn't fully compensated the teen for missed services. Nevertheless, it found insufficient evidence of discrimination. ■