

SWEET | STEVENS | KATZ | WILLIAMS

Lawyers for education.



RECENT OFFICE OF CIVIL RIGHTS INVESTIGATIONS INVOLVING IHPs

Christina M. Stephanos
cstephanos@sweetstevens.com

A number of United States Department of Education Office of Civil Rights (OCR) decisions following The ADA Amendments Act of 2008 have declared schools in violation of Section 504 for failing to consider Section 504 evaluations for students on Individual Health Plans (IHPs) in various fact situations:

- In *Opelika City (AL) City School District*, 11 LRP 47376 (OCR 2011), the parent requested a Section 504 plan for a student with diabetes. The school district instead implemented the student's diabetes management plan from his prior school and failed to provide the parent notice of her Section 504 rights. The school district's position was that it had no reason to convene a Section 504 meeting, since the student was doing well academically. Nevertheless, OCR found the school district in violation of Section 504 and added that [the district could not] delay a Section 504 evaluation merely based on the existence of an IHP, and a student must be evaluated within a reasonable time after the school district learns the student may have a qualifying disability.
- In *Roselle Park (NJ) School District*, 112 LRP 17, 599 (OCR 2012), OCR found that although the school district developed an IHP to address the student's limited mobility, the process used did not comply with the procedural requirements of Section 504. The school district convened a meeting with a group of interested individuals, but did not notify the parent of her procedural safeguards.
- In *Springer (NM) Municipal Schools*, 111 LRP 65, 450 (OCR 2011), the school district's "individualized health management plan" to address the pancreatitis-related dietary needs of a student who was frequently absent was found not to comply with Section 504. OCR opined that even though the student did not need academic modifications, the health plan was not developed by an appropriate 504 team or comply with Section 504's procedural protections.
- In *Torrington (CT) Bd. of Education*, 60 IDELR 295 (OCR 2012), the school district was under the impression that it properly addressed the needs of a student with life-threatening shellfish allergy by placing her on a health plan. The school district only initiated a Section 504 evaluation upon parent's request and admitted during the OCR investigation that had the parent not requested an evaluation, the student would have remained on the health plan. OCR found that the school district should have evaluated sooner and, in failing to do so, violated Section 504.
- In *Tyler (TX) Indep. School District*, 56 IDELR 24 (OCR 2010), the school district had a practice of providing health plans to students with diabetes. OCR rejected the policy as an acceptable alternative to determining the student's eligibility for a 504 plan.

To OCR, the Section 504 legal status, procedural rights, and non-discrimination protections are as important as the accommodations and services the student will receive from the school district. It is equally important for the school district to address both a student's immediate health related needs and the student and parents' legal rights in complying with its obligations.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

SOUTHEAST REGION OFFICE

331 East Butler Avenue, New Britain, PA 18901
PHONE 215 345 9111 | FAX 215 348 1147

CENTRAL REGION OFFICE

P.O. Box 956, Hershey, PA 17033
PHONE 717 641 9025 | FAX 717 641 9026

NORTHEAST REGION OFFICE

2 South Main Street, Suite 303, Pittston, PA 18640
PHONE 570 654 2210 | FAX 570 655 1875