



HOW I ADVISE MY CLIENTS': What's the best way to address 504 needs of numerous students with IHPs?

Staying on top of new referrals for Section 504 can be overwhelming. What's more, a number of students with individual health care plans in your district may be eligible for Section 504 services because the ADA Amendments Act broadened eligibility standards.

So which students served by IHPs need to be evaluated under Section 504? And what's the best way to address the 504 needs of a large number of students with IHPs?

Special Ed Connection® posed these questions to three experts in the field. Their responses are included below:

Daniel Osher, school attorney, Lozano Smith, Monterey, Calif.:

OCR has often held that if a student qualifies under Section 504 for a medical condition, a health plan alone is not sufficient -- the child needs a Section 504 plan, with the rights and procedures that accompany Section 504 eligibility. School districts are often surprised to learn this and are concerned that switching students from health plans to 504 plans will entail a tremendous amount of extra work. Fortunately, this does not have to be the case.

A 504 assessment for a medical condition does not have to be as comprehensive as a special education assessment. The purposes of a 504 assessment are to identify the student's disability, determine eligibility, identify the impacts of the student's disability upon their access to education, and identify ways of enabling the child to access education despite the disability. In the case of a noncontroversial medical condition, a school nurse can conduct the assessment based upon medical records from the doctor and a brief interview with the teacher.

The 504 plan itself can also be quite simple. If the student's only disability-related needs are that the health plan be followed for the administration of medication or in the event of an emergency, then the 504 plan can consist of little more than "see attached health plan."

Finally, it is very important that parents receive their rights under Section 504. Provide notice of rights to parents at least once per year, as well as at every Section 504 meeting, every time the 504 plan is revised, and every time a parent request is denied.

James McKethan, educational consultant, Fayetteville, N.C.:

While the substantive component of 504 accommodation plans and IHPs may be remarkably similar, the lack of procedural safeguards attached to IHPs could unintentionally result in 504 violations. You might think that if students with existing IHPs have medical or health issues [that] it's OK for the school nurse to develop a 504 plan and distribute it to other school staff. No! The 504 team must be made up of people knowledgeable about the student, evaluation data, and placement options.

Consider modifying IHP policies and procedures to ensure Section 504 requirements are not side-stepped. For example, refer students with medical and health problems for an IEP or [Section] 504 evaluation and then to IHP services if they are not 504-eligible.

To help identify [504]-eligible students who currently have IHPs, generate a list of students with IHPs. Once the list is generated, develop a schedule for reviews. If you are working with significant numbers of students with IHPs, address the 504 issues when IHPs are reviewed. For example, at least annually, or sooner if requested by parents or school personnel, or when the student experiences changes in his health or medical status. Ensure reviews are conducted by properly constituted 504 teams. Provide parents with their due process rights.

Kathryn S. Vander Broek, school attorney, Hinshaw & Culbertson LLP, Chicago:

Whether a school has a few or many students with IHPs, each must be reviewed on a case-by-case basis to determine whether the student's health condition rises to the level of a disability and, if so, the need for and nature of reasonable accommodations.

The following questions can assist in screening these cases and developing an appropriate plan of action to better ensure nondiscrimination in regard to students with IHPs:

1. Is the student's health condition temporary or ongoing? Temporary health conditions with an expected duration of less than six months generally are not considered disabilities. These students would not trigger the child find or FAPE obligations of Section 504 and an IHP typically would be sufficient. Temporary health conditions must be distinguished from ongoing health concerns whose symptoms and need for treatment or accommodations arise intermittently and may qualify as a disability.

2. Could the student be eligible under IDEA? IHPs that suggest a student's health condition may impede the student's ability to make educational progress trigger the school's child find obligations under IDEA. Consider referring these students for an IDEA evaluation in the first instance. If the student is not IDEA-eligible, the same assessment can inform Section 504 determinations, depending upon your district's policies and practices.

3. Is the IHP an update for a student already qualified for a 504 plan? Section 504 requires periodic reevaluation but does not set forth a specific timeline for such review. If the student has a 504 accommodation plan and there's a minor update to the IHP such as a change in dosage that doesn't change the student's eligibility, accommodation needs, or health status, then a re-evaluation by a 504 team may not be necessary. Check the existing plan for identified review periods and communicate with the student's parent(s) before determining to maintain the existing plan without further review. Document the decision and provide a copy to parent(s).

If the student does not fall within one of these categories, convene a 504 team to assess whether the student qualifies for Section 504 services, providing parents with notice of their procedural safeguards.

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

November 13, 2014

*Reprinted with Permission from: **SpecialEdConnection**[®]. Copyright © 2014 by LRP Publications, 360 Hiatt Drive, Palm Beach Gardens, FL 33418. All rights reserved. For more information on this or other products published by LRP Publications, please call 1-800-341-7874 or visit our website at www.specialedconnection.com.*