Carefully Consider 504 Referrals for Students with Health Issues

- Consider Many school districts are review and revising their procedures for serving students with medical impairments in light of the ADA Amendments Act
- For several years districts generally met the needs of students with disabilities via individualized health plans. However, many provisions today, in the ADAAA call this practice into question
- Consider the following question/answers which were fielded during the March 24 LRP audio conference, by Dave Richards, school attorney with Richard and Lindsay & Martin LLP in Austin, Texas

Ouestion:

"From a school nurse's perspective, it looks like there are no limits in terms of the types of medical issues that can trigger Section 504 eligibility. Every single student we have on a medical plan will be limited in a major life activity. Are all of these students eligible for 504?"

Answer:

When looking at 504 evaluations, after January 2009, when the ADAAA went into effect, a student's receipt of the Individualized Health Plan (IHP) is considered a mitigating measure that must be screened out, North Royalton (OH) City Sch. Dist., 52 IDELR 203 (OCR 2009).

Ask - How would the student do without the health plan? Many students would be substantially limited without a health plan, therefore, should be found 504-eligible.

What about those students, currently being served on a health plan, doing well, and who are **NOT being referred** for Section 504 Services?

If the student's needs are being met and he/she is receiving equal access and participation in the school's programs and activities, there should be NO reason to refer for an additional evaluation and provide services under Section 504.

Question:

"What would be different under a IHP vs. a Section 504 Plan?"

Answer-

As long as the IHP is meeting all the student's needs, the differences you will see if the IHP becomes a Section 504 Plan are:

- 504 Procedural Protections
- Manifestation Determination hearings
- Periodic re-evaluations

Ouestion:

"What if a school strongly suspects that a medical diagnosis it receives from a student's doctor is invalid?"

Answer:

<u>OCR's position</u> – Section 504 committees are NOT medical doctors.

If you have a medical diagnosis, then the district must take the diagnosis at face value unless you have another diagnosis to the contrary.

BEWARE: Should the Section 504 committee decide to reject eligibility, strongly consider heavily documenting your reliance on professional data, which clearly states that the diagnosis is not a medial impairment. This could also lead to an OCR complaint and 504 due process hearing.

Question:

"Can schools request that parents provide a copy of a student's medical records or sign a waiver of release so that school staff members can obtain medical records?"

Answer:

The district has a duty to provide an evaluation **at NO cost to the parent(s)/guardian(s)**.

Parents cannot claim that a district is not evaluating appropriately, if the district is **prohibited from access** to necessary additional medical or evaluation data.

Schools **CANNOT compel** parents **to provide medical records, release of records or consent to a district evaluation**. Remind parents this information **is necessary for completing** the determination of Section 504 eligibility.

In these situations, the school would have to continue with the evaluation, based on the data they have, in order to make an informed decision regarding Section 504 eligibility.



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