

Scenario One

An elementary school student with diabetes is determined not eligible for services under the Individuals with Disabilities Education Act (IDEA). Under the school district's Section 504 procedures, however, he is determined to have a disability. In order to participate in the regular classroom setting, the student is provided services under Section 504 that include assistance with glucose testing and insulin administration from trained school personnel. Later in the year, this student wants to join the school-sponsored gymnastics club that meets after school. The only eligibility requirement is that all gymnastics club members must attend that school. When the parent asks the school to provide the glucose testing and insulin administration that the student needs to participate in the gymnastics club, school personnel agree that it is necessary but respond that they are not required to provide him with such assistance because gymnastics club is an extracurricular activity.

What did the school district do correctly?

What did the school district do incorrectly?

What "regular or special education and related aids or services" should be provided to the student?

Scenario One Analysis

OCR would find that the school's decision violates Section 504. The student needs assistance in glucose testing and insulin administration in order to participate in activities during and after school. To meet the requirements of Section 504 FAPE, the school district must provide this needed assistance during the school day.

In addition, the school district must provide this assistance after school under Section 504 so that the student can participate in the gymnastics club, unless doing so would be a fundamental alteration of the district's education program. Because the school district always has a legal obligation under IDEA to provide aids or services in its education program to enable any IDEA-eligible students to participate in extracurricular activities, providing these aids or services after school to a student with a disability not eligible under the IDEA would rarely, if ever, be a fundamental alteration of its education program. This remains true even if there are currently no IDEA-eligible students in the district who need these aids or services.

In this example, OCR would find that the school district must provide glucose testing and insulin administration for this student during the gymnastics club in order to comply with its Section 504 obligations. The student needs this assistance in order to participate in the gymnastics club, and because this assistance is available under the IDEA for extracurricular activities, providing this assistance to this student would not constitute a fundamental alteration of the district's education program.

[OCR Dear Colleague Letter on Extracurricular Athletics, January 25, 2013](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html)
(<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.html>).

Scenario Two

Several classmates repeatedly called a student with a learning disability “stupid,” “idiot,” and “retard” while in school and on the school bus. On one occasion, these students tackled him, hit him with a school binder, and threw his personal items into the garbage. The student complained to his teachers and guidance counselor that he was continually being taunted and teased. School officials offered him counseling services and a psychiatric evaluation, but did not discipline the offending students. As a result, the harassment continued. The student, who had been performing well academically, became angry, frustrated, and depressed, and often refused to go to school to avoid the harassment.

What did the school district do correctly?

What did the school district do incorrectly?

What should the school district do now?

Scenario Two Analysis

In this example, the school failed to recognize the misconduct as disability harassment under Section 504 and Title II. The harassing conduct included behavior based on the student’s disability, and limited the student’s ability to benefit fully from the school’s education program (e.g., absenteeism). In failing to investigate and remedy the misconduct, the school did not comply with its obligations under Section 504 and Title II.

Counseling may be a helpful component of a remedy for harassment. In this example, however, since the school failed to recognize the behavior as disability harassment, the school did not adopt a comprehensive approach to eliminating the hostile environment. Such steps should have at least included disciplinary action against the harassers, consultation with the district’s Section 504/Title II coordinator to ensure a comprehensive and effective response, special training for staff on recognizing and effectively responding to harassment of students with disabilities, and monitoring to ensure that the harassment did not resume.

[OCR Dear Colleague Letter on Harassment and Bullying, October 26, 2010](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html)

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Scenario Three

A North Carolina middle school required parents of students in its self-contained program (SAC) to chaperone their children at school dances. All of the SAC students were children with mild intellectual disabilities. The principal explained that the primary reason for the policy was safety. He noted that some of the SAC students had seizure-prone disorders or diabetes. Also, special education staff members weren’t responsible for afterschool activities, and general education personnel chaperoning the events wouldn’t be aware of a particular student’s needs or experienced in handling students with significant disabilities. Moreover, he said, there was a lot of inappropriate behavior at the school, and other students might take photos of the SAC students and post them online. Finally, he noted that a neighboring middle school held a dance exclusively for SAC students from several middle schools. The grandparent of a SAC student filed an OCR complaint.

What did the school district do correctly?

What did the school district do incorrectly?

What should the school district do now?

Scenario Three Analysis

OCR found that the District's parent chaperone policy violated Section 504 because it conditioned the student's participation needs based on their parents' providing services and was based on a generalization about the needs of the SAC students. The policy ran contrary to the district's obligations to afford equal opportunity to participate in extracurricular activities and to make individualized determinations concerning students' needs.

OCR determined that the District has failed to make individualized, case-by-case determinations about what services or modifications are necessary to afford students with disabilities at the School an equal opportunity to participate in extracurricular activities. If the District determines that a student with a disability requires services or modifications to have an equal opportunity to participate, such as a higher level of supervision or trained personnel to assist with medical concerns, then the District must provide those services or modifications itself rather than requiring a student's parent to provide them. Here, the district violated Section 504 by placing the onus on the parents to provide chaperones.

Further, if District knows or should know about harassment on the disability that is sufficiently serious as to create a hostile environment, it must take prompt and effective action to eliminate the hostile environment and prevent its recurrence. Requiring students with disabilities to be supervised by parents at after-school activities would not be an appropriate preventive measure for peer harassment because it places the responsibility of preventing or responding to harassment on the victims' parents rather than the District.

Charlotte-Mecklenburg (NC) Schs., 113 LRP 18233 (OCR February 13, 2013).

Scenario Four

A sixth grade student has Type I diabetes and must administer insulin by injection during normal school hours. He must also test his blood sugar levels during school hours. The student had an individualized health care plan, and the student's father met with District staff to discuss the student's medical needs. The student's father requested that the student be provided a clean place to test his blood sugar levels and administer insulin, and stated that the student could do so on his own. A month into the school year, the student's father called to express his concern that the student was testing his blood in a bathroom and may not have been properly checking his blood sugar levels. The student's father requested monitoring and supervision of the student while he tested his blood sugar and self-injected insulin. It was agreed that the student would go to the guidance office for monitoring and District staff would measure the insulin dosage based upon the student's blood sugar levels. The student was never referred under the District's Section 504 procedures by anyone employed by the District.

What did the school district do correctly?

What did the school district do incorrectly?

What "regular or special education and related aids or services" should be provided to the student?

Scenario Four Analysis

Section 504 requires that a recipient shall conduct an evaluation of any student who, because of disability, needs or is believed to need special education or related services, before taking any action with respect to the initial placement of the student in regular or special education. Procedures for conducting evaluations are provided in 34 C.F.R. § 104.35(b). Although the District has implemented policies and procedures that are consistent with Section 504, there was sufficient evidence for OCR to conclude that the District should have pursued a Section 504 referral on behalf of the Student and failed to do so.

While some students with diabetes may be adequately served under an individualized health care plan, the District was aware of particular circumstances with regard to this student that warranted additional action in order to comply with Section 504. OCR found that this information should have given the District reason to suspect that the student may have a disability resulting in a need for special education or related services under Section 504, the standard which triggers an obligation to implement Section 504's evaluation and placement procedures at 34 C.F.R. § 104.35. OCR made no determination as to whether the application of Section 504's evaluation and placement process should result in a determination that the student is disabled within the meaning of Section 504 and entitled to special education or related services.

The District is further obligated to comply with Section 504 procedural safeguards. Specifically, it must provide notice of rights under 34 C.F.R. § 104.36, including the right to due process, with respect to any actions it takes regarding the Student's identification, evaluation, or educational placement.

Fayette County (KY) Schools, OCR Case File # 03-05-1061, July 6, 2005.

Scenario Five

A Pennsylvania high school student with a learning disability signed a behavior contract on April 4, 2011. The contract provided that the student would resolve peer confrontations nonviolently and that he could be reassigned to an alternative school if he didn't. The district suspended the student three times during the 2010-11 school year for fighting -- three days in November, two days in February, and five days in March. On April 19, the student was suspended two days for another physical altercation. The district transferred him to an alternative school for the balance of the school year. It didn't conduct a manifestation determination. The student's parent filed an OCR complaint asserting that the district violated Section 504. The district responded that it bypassed the MD process because the student breached his behavior contract. Moreover, it pointed out that Pennsylvania law allows a district to suspend a student with a disability for up to *15 cumulative days before it's considered a change of placement.*

What did the school district do correctly?

What did the school district do incorrectly?

What "regular or special education and related aids or services" should be provided to the student?

Scenario Five Analysis

OCR found that the district was required to consider whether the high school student's disability triggered his fighting. Neither the behavior contract nor state law reduced the student's

manifestation determination rights. The regulations implementing Section 504 require public elementary and secondary education programs to conduct an evaluation of any student with a disability who needs special education or related services before taking any action with respect to any significant change in the student's educational placement. The placement of a student with a disability is significantly changed when the student is suspended for more than ten consecutive days in a school year or for an indefinite period, or if the student is expelled. OCR policy requires that the first step in a reevaluation is to determine whether the misconduct for which the student is to be excluded from the school is a manifestation of the student's disability. The manifestation determination must afford the student and parent due process safeguards as required by Section 504.

OCR found that, during the 2010-2011 school year, the District significantly changed the Student's placement without reevaluating him in violation of the Section 504 regulation at 34 C.F.R. § 104.35(a). The District made a disciplinary change in the Student's placement to an alternative school. The District admittedly did not conduct a manifestation determination prior to making this disciplinary change of placement, or prior to suspending him for more than 10 days. The District also did not conduct a pre-placement evaluation. OCR determined that the district subjected the student to a change of placement when it suspended him for an 11th day. His placement was again changed when he was transferred. The student's behavior contract violation notwithstanding, the district had an obligation in both instances to determine whether the student's fighting was a manifestation of a disability.

Waynesboro (PA) Area Sch. Dist., 112 LRP 26149 (OCR 02/17/12).

Scenario Six

A sixth-grade student with Type I diabetes wanted to attend the district's multi-day Sierra Outdoor School (SOS) program. The student did not have a Section 504 Plan; however, like all diabetic students in the District, she had in place an Individual Health Support Plan ("IHSP"). Prior to the Student's attendance, the student's parents were told by District staff that one or both of them had to attend the SOS program with the student to ensure her medical needs would be adequately met. Additionally, the parents' cost of attending the program, along with its registration fee, would be borne by the parents. The district subsequently had the parents sign a release form, authorizing another parent to provide the student's medical services during the trip, who was a registered nurse (despite the fact that this individual was not comfortable acting as both a parent chaperone and a nurse on the field trip).

What did the school district do correctly?

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What "regular or special education and related aids or services" should be provided to the student?

Scenario Six Analysis

OCR concluded that the District failed to provide a FAPE to some of its disabled students when the students attended non-classroom activities related to the regular program of instruction (e.g., SOS program). In a significant number of cases, a student's participation in such activities was conditioned upon whether his or her medical services or support would be provided while

attending the activity. Whether the medical services or support would be provided was dependent upon whether the student's parent was willing to undertake certain obligations that were additional to those of parents of non-disabled students (e.g., payment of a registration or other fee to attend the activity; required personal attendance at the activity; a willingness to permit another parent, notwithstanding any reluctance or adequate training, to provide necessary support or services; etc.).

The imposition of additional expenses, time commitments, and health risks as a condition to District students with disabilities participating in the District's curriculum based field trips and non-classroom activities, such as the SOS program, serves to unnecessarily burden, deny, or limit the equal education and participation opportunities of students with disabilities. The District cannot condition a disabled student's participation in such activities upon the student's parents' willingness to accept an additional obligation or burden that is not likewise imposed on the parent of a non-disabled student.

OCR required the District to: develop a notice to send to all parents and staff informing them of the District's obligations and the students' rights to provision of a FAPE while participating in curriculum based extracurricular activities; refine its protocols for ensuring that students with disabilities are afforded an equal opportunity to participate in such activities; provide appropriate training of its staff; and reimburse those parents who have unnecessarily incurred expense in the past as a condition to one or more of their disabled children participating in such activities.

Clovis (CA) Unified School District, OCR Case File #09-08-1395 (April 23, 2009).

Scenario Seven

A seventh grade student's parent requested that district evaluate the student because she was unable to stay on task or complete schoolwork, has poor organizational skills, difficulty following instructions, and difficulty staying seated, avoids asking for assistance, inappropriately seeks attention, and talks excessively at inappropriate times. The student had been evaluated in third grade and determined to be at risk for ADD. The district retained the student in 3rd grade but did not conduct further evaluations until 8th grade. The student's report cards between kindergarten and 7th grade document the student's difficulty with following directions, sustaining attention, organizing, completing, and turning in schoolwork, and poor to failing academic performance. Despite her parent's requests for the district to evaluate the student for special education services, however, her teachers believed her poor academic performance was volitional because she had the ability to complete her schoolwork. After the parent's second request, the district agreed to provide the student with a Section 504 plan, but did not complete her evaluation for five months.

What did the school district do correctly?

What did the school district do incorrectly?

What "regular or special education and related aids or services" should be provided to the student?

Scenario Seven Analysis

OCR concluded that the district did not comply with Section 504 or the ADA because of its delay in completing the student's evaluation. Section 504 requires a district to evaluate any student

who, because of disability, needs or is believed to need special education or related services before initially providing the student services under Section 504. See 34 CFR 104.35(a). If a district determines, based on the facts and circumstances of an individual student's case, that it needs a medical, psychological, or other professional evaluation to evaluate the student consistent with 34 CFR 104.35, the district must provide the evaluation at no cost to the student's parents.

OCR determined that the district decided on June 1, 2004, to develop and implement a Section 504 plan for the student, but did not complete an evaluation of the student's disability-related needs until November 30, 2004. OCR concludes that the district's delay in conducting the evaluation did not comply with 34 CFR 104.33(a) and (b)(I), 104.35(a), and 28 CFR 35.130, because: district staff who decided not to evaluate the student in March and June 2004 did not review the student's education record, know about the student's 7-year history of serious academic performance problems, or know that in third grade the district identified the student at risk for ADD; district staff who determined that the student's then-current serious academic performance problems were not disability-based were not trained in identifying students with ADD and did not base their determination on the kind of information necessary for such a decision, and some district staff believed that it was not necessary to evaluate a student before developing and implementing a Section 504 plan.

Oak Harbor (WA) School District No. 201, OCR Case File # 10-05-1027 (May 4, 2005).