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OCR Releases New Section 504 Resource Guide

On December 28, 2016, the Office for Civil Rights (“OCR”) within the U.S. Department of Education released several guidance documents, including a *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools* (“*Resource Guide to Section 504*”). [<http://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>]

The *Resource Guide to Section 504* is a comprehensive overview of the obligations of public schools in complying with Section 504 of the Rehabilitation Act of 1973. From time to time, OCR issues “Dear Colleague Letters” that provide policy interpretations on various subjects but, until recently, OCR failed to provide any comprehensive resources on the Section 504 process and school district responsibilities. In July of 2016, OCR issued a Resource Guide regarding Students with ADHD that provided an overview of the Section 504 process using ADHD as an example. [<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>] We provided earlier coverage of OCR’s ADHD guidance [<http://www.ctschoolaw.com/2016/08/office-for-civil-rights-issues-new-dear-colleague-letter-regarding-adhd/>]. The new *Resource Guide to Section 504* builds upon that guidance and provides a general overview of a variety of topics, including:

- The meaning of disability under Section 504;
- The provision of FAPE under Section 504, including the evaluation and reevaluation process and placement decisions;
- Athletics and extracurricular activities;
- Physical accessibility;
- Unjustified different treatment;
- Bullying and harassment, including duties to investigate and to respond promptly;
- Dispute systems for FAPE and non-FAPE related matters, including distinct due process and grievance procedures;
- Retaliation; and
- Differences and overlaps with Title II of the Americans with Disabilities Act and the Individuals with Disabilities Education Act.

The guidance in the *Resource Guide to Section 504* generally synthesizes existing OCR guidance from previous Dear Colleague Letters and Question and Answer guidance documents and also provides several scenarios to illustrate particular points.

While the guidance is not new, there are several provisions that provide important reminders of OCR’s current interpretations:

- “[I]ndications that a student’s behavior is out of the expected range of behaviors for students of similar age may trigger a school district’s obligation



to evaluate under Section 504 to determine whether the student has a disability and needs special education or related services as a result of that disability.”

- “If a school district determines, based on the facts and circumstances of the individual case, that a medical assessment is necessary to conduct a Section 504 individual evaluation in order to determine whether a child has a disability under Section 504 and needs special education or related services because of a disability, the school district must ensure that the student receives this assessment at no cost to the student’s parents.”
- “If a district believes a medical assessment is necessary and the parent volunteers to pay for a private assessment, the district must make it clear that the parent has a choice and can choose to accept a school-furnished assessment at no cost to the parent.”
- “A specific diagnosis is not actually necessary if the school determines a student is substantially limited in a major life activity and that limitation is caused by a mental or physical impairment.”
- “[W]hile a medical diagnosis alone can inform school staff about whether a student has a disease that substantially limits a major life activity, it is unlikely that a medical diagnosis alone will also provide enough information for school staff to determine what services the student needs.”
- “Section 504 prohibits disability-based harassment by peers that is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the school’s education programs and activities (in other words, creates a hostile environment). When a school district knows or reasonably should know of possible disability-based harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that the harassment created a hostile environment, the recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects.”
- “[H]arassment does not have to include intent to harm, be directed at a specific targeted student, or involve repeated incidents in order for it to be considered discriminatory.”

In sum, we recommend school officials review the new *Resource Guide to Section 504* alongside district practices.

Questions or Assistance:

For questions about OCR’s *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools*, and how the guidance may apply to your schools, please contact Peter J. Maher at 860-251-5507 or pmaher@goodwin.com; Alyce L. Alfano at 860-251-5663 or aalfano@goodwin.com; or Gwen J. Zittoun at 860-251-5523 or gzittoun@goodwin.com.

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