

Key points:

- Involve medical professionals in team decision-making
- Rely on data when rejecting physician's recommendation
- Clarify reasons behind parents' service requests

Mitigate conflict over role of physician's orders in special ed decisions

An Illinois district did not retaliate against the parent of a student with a disability when it declined to grant an aide after the child suffered a traumatic brain injury on the playground. *Rochester (IL) Sch. Dist. 3A*, 54 IDELR 233 (OCR 2009).

On the student's return to school, her physician recommended she receive additional assistance with staying on task, refocusing and rechecking her work. The student's parent alleged the district refused to provide an aide in retaliation for her advocacy on the child's behalf.

The district argued that the student's teacher could provide the support the physician suggested. OCR noted that the doctor's letter did not specify that an aide was required, only that the student needed extra help. As such, the district's refusal was not an adverse action taken in response to the mother's advocacy.

Physician recommendations play a key role in some service decisions. Yet, disagreements about how these orders translate to the school setting can ignite contention and lead to a claim like the one in this case. Devise steps to mitigate such conflict. Also support denials of service requests with sound data.

"When a physician writes a recommendation for services in the school [setting], families get a false idea of what will happen. That's probably where the confusion came from" in this case, said Mary Schillinger, assistant superintendent of education for the Las Virgenes (Calif.) Unified School District. "There has to be better communication between the parent and the school about what is appropriate."

"Districts also can become concerned in making decisions [like the one in this case] because if they have a difficult parent, they may be afraid of new claims," added Julie Fay, a school attorney with Shipman & Goodwin LLP in Hartford, Conn. "Still, they have to make sound educational decisions for the child, and as long as those decisions are based on data, you'll have a better chance of refuting allegations."

Special Ed Connection® related story

- Be prepared to field service requests driven by physicians' notes (Aug. 4)

Melissa Greenwood covers Section 504 issues for LRP Publications.

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Be prepared to field service requests driven by physicians' notes

Disagreements about how a physician's recommendation applies to the school setting can ignite conflict and potentially lead to a retaliation claim. See, for example, *Rochester (IL) School District 3A*, 54 IDELR 233 (OCR 2009).

Ensure your staff members are prepared to field service requests driven by physicians' notes to help minimize similar claims. Share these tips with them:

• **Collaborate with physicians.** A parent's interpretation of what a doctor's note means can be quite different from what school staff members think it means, said Julie Fay, a school attorney with Shipman & Goodwin LLP in Hartford, Conn. Thus, involve medical professionals in the discussion anytime there are questions about the intent of a doctor's note, she said. Seek consent to talk with the student's physician. Also clarify what the doctor's orders mean and how they translate to the school setting. "Doctors typically write these notes in a vacuum. That's why follow-up is necessary," Fay said. "The doctor might not know that the child receives Title I services and is earning passing grades. He only knows what the parents are telling him," she added.

• **Rely on data if rejecting a physician's recommendation.** The *Rochester* case illustrates that denying a parent-led service request can set the stage for a legal claim. It also demonstrates that good data make a solid case, sources said. "You can't base these decisions on a gut feeling," said Mary Schillinger, assistant superintendent of education for the Las Virgenes (Calif.) Unified School District. "Make sure you base [them] on data. That way, if a parent files a retaliation claim, you have the data to back up your decision." Fay agreed. Educational decisions should be data-driven. Collect information by asking questions such as: How is the child performing? How are the child's assessment grades? How is the child doing on grade-level standards? What assistance is she already getting to achieve the current level of functioning?

• **Clarify reasons behind parent requests.** If a parent requests an academic aide, for example, ask him to specify why he wants the service, Schillinger said. "Sometimes it isn't evident exactly what a parent's concerns are until you start asking questions," she said. Consider this example: A parent requests a full-time aide for her child. The IEP team doesn't see an educational need for this service. In talking with the parent, the team uncovers that the child was bullied in kindergarten, and the parent's real concern is about the potential for bullying during recess. The team now can consider appropriate supports to address this concern.

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