

SPECIAL POINTS OF INTEREST:

- English language learners with disabilities must receive equal access to educational programs and activities
- Schools must ensure that ELL students with disabilities receive BOTH their ESL and disability related services
- District cannot ignore the known mental health needs of students
- District was only required to obtain consent from one guardian in order to change placement

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OCR ISSUES FACT SHEET ON ELL STUDENTS WITH DISABILITIES

The Office for Civil Rights (OCR) issued a fact sheet on November 12, 2024 on the responsibilities for local educational agencies and schools serving children who are English Language Learners (ELL) with disabilities.

According to OCR, US public schools educate 5.2 million ELL students, 16% of whom have disabilities. Schools must ensure

that these students receive equal access to programs and activities. The OCR fact sheet outlines schools' responsibilities and obligations under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

Although there is some question about the future of the Department of Education and

OCR under President-elect Trump, as of now, states and LEAs must continue to follow all federal rules and regulations. The fact sheet, which will be described more fully herein, offers guidance to school districts to help avoid violating civil rights laws for students who are ELL and have disabilities.

Read More about requirements for ELL students with disabilities on page 3

Parent Participation in IEP Decisions

The IDEA requires that parents be provided an opportunity to meaningfully participate in educational decisions pertaining to their child. However, often times only one parent attends the IEP meeting. Moreover, there is only one signature line on the NOREP that is issued to change the educational placement of a child. Are schools required to ensure that both parents participate in the decision making process and are schools required to obtain both parents' signatures on the NOREP? You be the Judge!

Review the 3rd Circuit's determination on p. 5

CASE LAW UPDATE

Skroupa v. Shaler Area School District

W.D. of Pennsylvania

Factual History: Parent of a 13 year old boy, Collin, who committed suicide and his older sister who found him filed an action in Federal Court. According to the Complaint, Collin was diagnosed with OCD and began receiving mental health services in 2020. Although the District was aware of the diagnosis, outside treatments and increasing struggles, they did not conduct an evaluation. Collin committed suicide in January, 2022.

Collin's sister, M.R. was academically successful until 10th grade. Following the loss of her brother, mother alleges that the District did not offer counseling or other supports. The sister's anxiety and depression increased significantly after her brother's death. She began missing school and her grades dropped. No evaluation was initiated and no 504 Plan was developed.

Instead, the following year, the District's social worker contacted mother to suggest that M.R. attend Shaler Area Academy, an online program for students who are at risk for failing to graduate. Although M.R. tried to attend school in person, she ultimately enrolled in the Academy.

In November, UPMC diagnosed M.R. with Depression, Anxiety and PTSD and wrote a letter to the District recommending a 504 Plan. The District again did not initiate an evaluation or develop a 504 Plan. It was not until February—more than a year after her brother's death, that the District issued a Permission to Evaluate. The District did not develop a 504 Plan while the evaluation was pending.

Parent filed suit directly in Federal Court alleging that the District failed to provide appropriate services and counseling to Collin and failed to address M.R.'s continuing mental health needs in violation of the ADA, Section 504 and the IDEA.

District's Motion To Dismiss: The District filed a

Motion to Dismiss alleging that the family failed to exhaust their administrative remedies and failed to state a claim against the School District. In a Motion to Dismiss, all allegations by the Plaintiff (the Family) are presumed to be true and accurate.

Court's Ruling: The Court found that the family did not have to exhaust administrative remedies by first filing a due process complaint. In this case, because Collin is deceased, it would be futile to file a due process complaint, where the only remedy a hearing officer could award is compensatory education, which would not be an appropriate remedy. The Court also found that the family sufficiently plead their claims against the District.



Take Aways: A Motion to Dismiss does not mean that the family will ultimately prevail in the case, but their claims are able to move forward.

Districts are seeing more and more students with mental health needs. Based on the facts of this case and the initial ruling on the Motion to Dismiss, it is imperative that Districts do not ignore information about a student's mental health needs. Assuming the facts as plead are true, to avoid liability Districts must consider conducting an evaluation for a 504 Plan or eligibility under the IDEA when:

- There is knowledge of a specific mental health diagnosis;
- There is knowledge that a student is seeking outside mental health treatment or is hospitalized for mental health reasons;
- There is knowledge that a student with mental health needs is struggling in school;
- A student's attendance and/or grades decline due to mental health issues;
- Parents provide an outside report or evaluation that requests a 504 Plan or an IDEA evaluation;
- Also consider providing a 504 Plan while an IDEA evaluation is pending if the student is experiencing significant issues AND has a documented disability

Fact Sheet on ELL Students with Disabilities

(Continued from page 1)

Title VI

Title VI of the Civil Rights Act requires schools to have procedures to identify students who may be ELL and take affirmative steps to ensure that they can meaningfully participate in educational programs and services. In order to meaningfully participate, schools must provide meaningful language assistance services to ELL students that are educationally sound in theory, appropriately resourced and effective. Language assistance services enable ELL students to:

- Overcome language barriers
- Work toward English proficiency; and
- Participate equally, fully and meaningfully in the standard instructional programming within a reasonable period of time.

Additionally, Title VI requires schools to ensure meaningful communications with parents or guardians who have Limited English Proficiency (LEP) in a language they can understand. Schools must take steps to provide effective language assistance to parents or guardians who have LEP, including providing accurate written translation or oral interpretation.

Section 504

Section 504 of the Rehabilitation Act requires public schools to provide students with disabilities FAPE. FAPE is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the student with disabilities as adequately as the needs of students without disabilities are met.

Title II of the ADA

Title II requires public agencies, including schools, to take steps to ensure communication with individuals with disabilities is as effective as communication with others.

ELL Students With Disabilities

OCR advises that schools must provide students who are ELL and also have disabilities with both the EL services and the disability related services to which they are entitled under these federal laws. Following these laws will ensure that ELL students who have disabilities are properly identified in a timely manner and will avoid improperly identifying a student who is an ELL as having a disability simply because of their limited English proficiency.

To avoid violations of federal law, schools must evaluate ELL students for a disability in an appropriate language based on the student's needs and language skills. ELL students who have been identified as having a disability must also receive appropriate disability related services and accommodations when their English language proficiency is being assessed.

To ensure that appropriate 504 services are being provided and are designed to meet the ELL student's needs, OCR advises schools to draw on information from a variety of sources, including the student's social and cultural background, input from teachers and that placement decisions are being made by a group that is knowledgeable about the student. OCR advises this should include the ELL teacher.

Fact Sheet on ELL Students With Disabilities

OCR provided examples of the kinds of practices to avoid to remain in compliance with federal law

- Determining that an ELL student has a disability based only on their ELL status or their English Language Proficiency (ELP)
- Determining that an ELL student with a disability does not need disability related services because they get EL services
- Delaying a disability evaluation, placement or service because the student is ELL
- Making an ELL student with a disability choose between ELL services or disability services
- Conducting a 504 evaluation for an ELL student who is suspected as having a disability only in English instead of the student's native/preferred language
- Only providing disability related services in English for an ELL student who requires services in another language
- Scheduling disability related services at the same time that ESL services are provided, forcing the student to miss one or the other
- Communicating with parents who have Limited English Proficiency (LEP) about their child's disability related services in a language other than their preferred language
- Not providing interpreting services at a 504 meeting or not translating Section 504 notices or plans for parents or guardians who have LEP
- Identifying or determining whether an ELL child is a student with a disability based on their English language skills
- Informing an ELL student who is blind that the Braille would only be in English
- Not providing a parent who has LEP and who is deaf or hard of hearing with an interpreter who can translate in their preferred language at a 504 meeting
- Separating student who are ELL with disabilities from other students who are ELL or from students generally when not necessary to provide services

WHAT DO YOU THINK?

A high school student with autism brings a knife to school. The student's guardians are his grandparents, but his grandma usually participates in IEP meetings and signs NOREPs. The Principal contacts home, suspends the student and sends notice for an informal hearing. Only the student's grandfather attends. At that meeting, grandfather agrees to a 45 day change of placement due to the weapons violation. Student attends the 45 day placement, but the Principal suggests that it be extended for an additional 3 weeks until the end of the semester. Grandfather again agrees. Thereafter, the student's grandmother files for due process alleging that she was not given an opportunity to meaningfully participate in the disciplinary decisions, particularly in light of the fact that she was typically the guardian who participated in meetings.

Did the District violate the IDEA by only getting the grandfather's consent to change and then extend the placement?

- A. Yes, the grandmother was typically the guardian who made decisions and the District should have obtained her consent rather than the grandfather
- B. Yes, both parents must agree to change the student's placement
- C. No, the grandfather was also the child's legal guardian and therefore had the right to agree to the change of placement and subsequent extension

The 3rd Circuit, in an unpublished decision, reviewed a case with similar facts. The Court found that the grandfather, as a legal guardian had the authority to make decisions for the child. The grandmother was not denied the ability to participate, despite the fact that only the grandfather attended the meeting and made the decision to change the student's placement and subsequently extend it. The grandmother had been involved in meetings and was able to participate in educational decisions for the child. The Court found no violation of the IDEA.



Andrews & Price, LLP

1500 Ardmore Boulevard
Suite 506
Pittsburgh, PA 15221

Phone: 412-243-9700
Fax: 412-243-9660
E-mail: tandrews@andrewsandprice.com

If you have a special education issue you would like to see addressed in subsequent issues of this newsletter, please write to or e-mail Trish Andrews at the above address.

Andrews & Price, LLP is the pre-eminent law firm in Western Pennsylvania in the practice of Public Sector Law. Our attorneys have more than 60 years of combined experience servicing School Districts. We provide a full range of legal services to our clients, including serving as Solicitor for various school districts, serving as special counsel for special education due process hearings, presenting seminars relating to the Reauthorization of IDEA and representing our clients in all types of litigation, including defense of numerous civil rights suits in federal and state Court.



Tri-State Area School Study Council
Department of Administrative and Policy Studies
School of Education
University of Pittsburgh

230 S. Bouquet Street
4302 Wesley W. Posvar Hall
Pittsburgh, PA 15260
Phone: (412) 648-7175
Fax: (412) 648-7185

TRI-STATE AREA SCHOOL STUDY COUNCIL

Tri-State Area School Study Council of the Administrative and Policy Studies Department of the School of Education of the University of Pittsburgh seeks ways to increase organizational capacity in schools through problem solving, technical service, and staff development so all students will be better prepared to make contributions to both our democratic society and the world community.

Tri-State was founded in 1948 by Dr. Maurice Thomas. Since its inception, Tri-State has provided a wealth of comprehensive technical assistance, strategic planning, and employment searches to school districts in the Western Pennsylvania region. Tri-State's vast knowledge and experience base draws upon a membership of 100+ school districts and a team of leaders and consultants with rich backgrounds in education, including former school superintendents and professors of education.

Nolan Baker
PH: (412) 389-4957

Consult Your Solicitor!

The legal issues discussed herein are for the purpose of providing general knowledge and guidance in the area of special education. This newsletter should not be construed as legal advice and does not replace the need for legal counsel with respect to particular problems which arise in each district. As each child is unique, each legal problem is unique. Accordingly, when districts are faced with a particular legal problem, they should consult their solicitor or with special education counsel to work through the issues on a case by case basis.