

SPECIAL POINTS OF IN- TEREST:

- Schools should consider whether a disability is contributing to a student being chronically absent
- IEP Teams should address truancy through supports and services in a child's IEP
- A 45 day alternative placement may be an option for a child whose behaviors are substantially likely to result in injury to the child or others
- Principal's must respond appropriately to reports of disability harassment

INSIDE THIS ISSUE:

Truancy and Special Education	P. 1, 3
Providing Appropriate 504 Plans	P. 1, 5
Case Law Update	P. 2
What Do You Think?	P. 4

TRUANCY AND SPECIAL EDUCATION

Truancy poses a significant challenge for schools and when it involves special education students, the situation becomes even more complex. While filing truancy charges or dropping a student from the school rolls may be a district's first considerations, schools should always consider whether a student's disability may be contributing to their absences from school.

To address truancy effectively for special education students and for those students who are not yet eligible, schools should consider the individual needs of the child, the possible reasons for or causes of the truancy and develop strategies to support the student to begin coming to school.

Special education directors should work closely with Principals

or attendance officers so that the students that are chronically absent are on more than one person's radar.

Failing to consider these issues can lead to child find violations, eligibility mistakes or denial of FAPE claims. This article will discuss the importance of addressing truancy as it relates to special education.

[Read More about Truancy on page 3](#)

Providing Appropriate 504 Services

Providing a 504 Plan for an eligible student is a crucial tool in providing necessary accommodations and modifications to create equal access to education for students with disabilities. However, the effectiveness of a 504 plan hinges on its appropriateness to an individual student's sometimes changing needs. It is important for staff to monitor a child's needs from year to year and provide individualized services to meet those needs and even more important to monitor the success, or lack of success of the student and change the plan accordingly.

[Consider These Tips for 504 Plans on page 5](#)

CASE LAW UPDATE

C.R. v. Downingtown Area S.D.

Hearing Officer Decision

45 Day Placement

Issue: School District sought a change of placement to a 45 day interim alternative setting because maintaining the student in the current placement was substantially likely to result in injury to the child or others. The Hearing Officer agreed.

Facts: Prior to entering school, C.R. was diagnosed with ADHD and Adjustment Disorder. An initial treatment plan was developed to address C.R.'s physical and verbal aggression, disruptive behavior, property destruction, social skills and conflict with peers and staff at daycare. An IEP was developed for C.R. to begin the 2022 school year.

By September 1, the student's learning support teacher reported student's anger, grunting, growling, charging at the teacher and pretending to cut a TSS. The elementary school had a BCBA on staff who provided direct instruction to C.R. in social-emotional learning, self-regulation, self-management, peer interaction and social skills. C.R. also received counseling, behavior support and crisis intervention from the school's prevention specialist. A reevaluation was proposed by September 20. C.R. continued to exhibit extreme and dangerous behaviors, including hitting, kicking, head-butting, punching, pushing and spitting on staff.

As the behaviors continued throughout the school year despite supports, the IEP met in April to propose a change of placement to a full time emotional support program in a different elementary building. It appears that parents disagreed and C.R. remained in the current placement. The following school year, in the month of September, C.R. engaged in multiple incidents of physical aggression including hitting, punching, hair pulling and scratching multiple staff and students and multiple attempts to elope. Verbal threats and yelling also occurred. The District requested an expedited hearing.

Request for a Hearing: Pursuant to the IDEA, 20 U.S.C. § 1415(k)(3)(A): the parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, *or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others*, may request a hearing. The District in this case requested the hearing under this provision of the IDEA. The Hearing Officer must either return the child to the last agreed upon placement or order a change in placement to an appropriate interim alternative setting for not more than 45 school days.



Analysis: The Hearing Officer found that the school district provided ample evidence that the student exhibited a pattern of volatile behaviors including hitting, kicking, scratching, pushing staff and peers, verbal threats of harm and elopement. Despite interventions provided by the District, the student's behavior was unpredictable and violent and warranted a 45 day placement.

It is important to note that the District made multiple efforts to address the student's behavior prior to requesting a hearing. Multiple IEP meetings were held and supports such as an FBA, PBSP, a crisis plan, the use of a BCBA, intervention specialist and a 1:1 aide were implemented. The District did not simply jump to removing the student. Rather they made every attempt to keep C.R. in a less restrictive environment prior to filing their Complaint.

It is equally important to note that the District had an interim placement in a full-time emotional support program available for the student that would provide instruction that focused on behavior management and regulation. With the current difficulties in finding alternative placements that have openings and are willing to accept students with significant behaviors, this option may not be an option if an appropriate interim alternative placement is not available.

Dealing with Truancy Issues

(Continued from page 1)

CHILD FIND

Lack of school attendance on its own does not qualify a student for special education services. However, District's have an obligation under Child Find to evaluate students who either have or are suspected of having a disability and need special education services. A District's child find obligation may be triggered where a student has significant absences that are linked to a disability.

Therefore, chronic absenteeism should not just be ignored or dealt with in a pecuniary manner. It is important to find out why the student is missing school. Is the student exhibiting health related issues or social and emotional challenges that are causing them to miss school? On the other hand, if the student is simply skipping school to hang out with an older friend, or the parents are just not making the child get up for school, it is unlikely that this student needs special education services. Nevertheless, it is important to understand the cause or reason for the truancy.

Again, consult with Principals and attendance officers to ensure that they are looking for patterns in attendance problems that may trigger child find. For example, a parent who is consistently providing excuses explaining that their child didn't come to school due to anxiety or other mental health related issues should be brought to the attention of the special education director. Provide professional development to ensure that they know what to look for.

TRUANT STUDENTS THAT ARE ALREADY ELIGIBLE

If a student who already qualifies for special education services becomes truant it is equally important to find out why. The student's IEP team should convene to review whether the current IEP adequately addresses the student's needs and provides a proper level of support. It is possible that insufficient accommodations or modifications are contributing to the student's disengagement. Especially relevant is determining whether the student's social and emotional issues are being addressed.

ADDRESSING TRUANCY IN THE IEP

It may be necessary to start with a reevaluation and/or an FBA to further determine the cause of the student's truancy to ensure that you are intervening appropriately for the child. It is important that the responses set forth in the IEP are related to the student's individual needs.

Develop or revise IEPs to provide individualized supports for the students:

- Develop attendance plans
- Establish procedures so the student feels comfortable or has a safe space when they arrive at school
- Foster relationships between the student and a trusted staff member
- Provide counseling; therapy sessions or access to mental health supports
- Give positive reinforcements/rewards for school attendance
- Ensure that the IEP includes appropriate academic supports
- Don't forget to review transportation solutions for access to reliable and appropriate transportation

SHOWING THAT FAPE WAS AVAILABLE

Several PA hearing officers and Court cases have found in favor of the school district where the District can show that truancy was not ignored and was addressed by the team. One hearing officer found that a school district that addressed a kindergartener's absenteeism "early and often" did not deny the child FAPE. Another found a district that took a variety of steps to assist the child and secure attendance long before filing truancy as a last resort provided the student with FAPE. A recent Western District of PA case found that a local school district that offered evaluations and services to a student with significant mental health needs who would not attend school appropriately documented their offer of FAPE for the student.

WHAT DO YOU THINK?

A parent reported that a classmate, Joey, was verbally harassing their daughter, Sara, and threatening the student based on her disability to the Principal. Based on the report, the teacher moved Sara's seat and told Sara to keep her distance and find the front of the line whenever possible. The Principal brought Joey in and spoke to him alone, then brought Sara in with Joey to talk about peer friendships and how they could get along. Joey was also disciplined. The Principal, however, did no additional investigation of the complaint. The parent complained several more times about general issues in the classroom, and also made a specific complaint about another student, Sam, making fun of Sara's disability. The Principal called Sam's home, but did not issue discipline. The Principal met with Sara's mother, who gave him notes about a 3rd student calling Sara an inappropriate name. Sara was then involved in another altercation with a 4th student who clearly was targeting Sara. The Principal felt this incident was an accident. The Principal at no time considered whether these incidents related to Sara's disability nor did the District immediately hold an IEP meeting. The parents filed a Complaint with OCR alleging disability harassment. How do you think OCR ruled?

- A. The District properly addressed the disability harassment because the Principal took action when he was made aware of the events.
- B. The District did not properly address the disability harassment because they did not stop additional actions from occurring.
- C. The District did not respond appropriately because the Principals' actions were not reasonably calculated to prevent further harassment.

OCR ruled that the District discriminated against the student by not properly investigating the alleged incidents and therefore the District could not have taken steps reasonably calculated to prevent further harassment. The Principal did not speak to any adults or staff who witnessed any of the events and did not even consider whether these 4 incidents rose to the level of disability harassment. The District inappropriately put the onus on the victim by changing her seat and telling her to avoid the other student. The District also failed to consider how the bullying impacted Sara's ability to receive FAPE and whether the student needed additional supports and services to address the impact the bullying was having on her.

Providing Appropriate 504 Plans

	Details
Thorough Assessment and Documentation	<ul style="list-style-type: none"> • Before creating a 504 plan, schools should conduct a thorough assessment of the student's needs • Review medical documentation • Obtain input from health care professionals • Gather information from parents and teachers • Consider the student's academic performance • Document the specific impact of the disability on the student's education
Collaboration with stakeholders	<ul style="list-style-type: none"> • Hold annual meetings with parents, teachers, administrators and other relevant specialists • Ensure everyone is on the same page regarding the student's needs and the accommodations that are being provided.
Individualized Plans	<ul style="list-style-type: none"> • 504 Plans should be individualized based on the student's identified needs • Include both educational and medical accommodations and modifications • Double check that all of the child's needs are being addressed within the 504 plan
Implementation	<ul style="list-style-type: none"> • All school personnel working with the child should be aware of the children that they service who have 504 plans • Those staff members must be aware of the provisions of the service agreement so they can appropriately implement it.
Periodic reviews	<ul style="list-style-type: none"> • Recognize that students needs may change over time • Be sure that the accommodations remain appropriate and effective for the student • Be proactive in addressing concerns or making changes to meet needs
Monitoring and Evaluation	<ul style="list-style-type: none"> • Continuous monitoring is key • Staff should complete regular check-ins to determine how well the accommodations are working for the student • Adjustments should be made to the plan as needed • Consider whether the child needs less or more services to meet their needs • Does the child need to be reevaluated and considered for an IEP?



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.