



Here's how to determine if a student with IHP needs a Section 504 plan

Consider this scenario: Parents of a student with an individual health plan ask every other week for a new accommodation, but they have not asked for a Section 504 evaluation. Should the district consider a Section 504 plan for the student?

Indeed, in some cases, a student may require both an IHP and Section 504 plan to receive FAPE. See, e.g., *Birdville (TX) Indep. Sch. Dist.*, [65 IDELR 307](#) (OCR 2015). Special education directors should ensure staff members know when they should think about a Section 504 plan for a student with an IHP.

"If it's working with the parent under an IHP, I think, 'If it ain't broke, don't fix it,'" said Michelle A. Todd, a school attorney at Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP in Arlington Heights, Ill. "But if the parents are expecting you to accommodate the student on an IHP, I would formalize it in a different way. We are seeing far more districts moving to just the Section 504 process and 504 plans for students who have medical conditions when historically they would have looked at an IHP. With the Department of Education and Office of Civil Rights taking a really expansive definition of disability and eligibility under Section 504, the trend is moving toward Section 504 eligibility for students that present with medical conditions."

Share these ideas with staff for when to consider a Section 504 plan for a student with an IHP:

- **Clarify state law.** In Illinois, students with diabetes and epilepsy must have Section 504 plans under state law, Todd said. Check state law to see if any students with medical conditions are automatically eligible under Section 504 to avoid violating child find. [34 CFR 104.32](#) (a).
- **Differentiate between low and high needs.** Students who require little medical intervention in school, such as those with celiac or with asthma and just an inhaler for emergencies, may be served appropriately through an IHP, Todd said. "There may be an emergency action plan for an asthmatic student," she said. "For students with low-level medical needs that don't require school-based accommodation, I still see students on individual health plans." But the more severe the student's medical needs, the more accommodations the student may need in the school setting, and the more likely the student would fall under Section 504 eligibility.

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- **Don't forget about possible IDEA eligibility.** A student who has significant medical needs may benefit from more than a Section 504 plan, Todd said. "I typically advise teams to do a Section 504 evaluation and case study for IDEA eligibility at the same time if a child is truly that [significantly in need]," she said. "You may decide the student is eligible under other health impairment and qualifies for an IEP, but if you don't, then you can move right into the Section 504 eligibility determination."

Just don't focus too much on whether the student's condition affects his learning for Section 504 eligibility, Todd said. "Where I see IEP teams then get caught up is they think this doesn't necessarily have an impact on the student's learning, so the student's not eligible under Section 504," she said. "That's the incorrect way to determine Section 504 eligibility. It can affect any major life activity. Not just learning."

Also, recognize that parents may be more likely to accept a Section 504 plan than an IEP because of the stigma that still surrounds special education for many, Todd said. "A parent's prior experience with special education may come into play," she said. "They may carry baggage with them if they were eligible or it may be a cultural thing."

Parents may also prefer a Section 504 plan to an IHP or IEP because they are thinking long-term about accommodations for college entrance exams, Todd said. "Transitioning a Section 504 plan to postsecondary is a lot easier than not having one or having an IEP," she said.

- **Emphasize resolution.** If parents of a student with an IHP regularly ask for accommodations for their child and the team doesn't think they're necessary, coming to an agreement may be difficult, Todd said. "There's no mechanism to resolve a dispute," she said. But with the Section 504 process, the parents can file a complaint with the Office of Civil Rights if they disagree with the team's decision about an accommodation, Todd said. "So, you have a way to resolve disputes if you have one," she said. "So, I have advised districts in the past that if they have a parent like this and the student is on a health plan, and you're not seeing eye to eye, think about transitioning that student to a Section 504 plan. If you have a really troubling situation, and you're looking at whether the student is Section 504 eligible, you may want to go down that route and write a Section 504 plan to formalize the process for parents."

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