



## **Private schools: Consider Section 504, ADA obligation when accepting COVID-19 relief federal funding**

Section 504 applies to private schools that receive federal funds, which are defined in the regulations as, "any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the [U.S. Education] Department provides or otherwise makes available assistance in the form of: 1) Funds; 2) Services of Federal personnel; or 3) Real or personal property or any interest in the use of such property." [34 CFR 104.3](#) (h).

This begs the question: If private schools are accepting COVID-19 relief federal funding, do they have to follow Section 504 and the ADA?

"Nobody can say for certain with this unprecedented time, so we fall back on the regular rules and principles for federal funding," said Jeffrey J. Weiss, a school attorney at Harris Beach PLLC in Buffalo, N.Y. "Historically, it's been broadly construed that if you get federal funding of any form, then you're going to be on the hook. It's something a nonpublic school should consider when they take the money."

### **Two scenarios**

Private schools, therefore, might follow one of two scenarios, Weiss said. "A nonpublic school could just say, 'You know what? I'm convinced I'm on the hook for 504. I will start taking actions consistent with nonpublic schools 504 obligations.'"

The question there is, if the private school receives the funding once, in a one-time payment, is it forever obligated to follow Section 504? "I presume it stops at some point," Weiss said.

Or the private school could wait. If a parent does not push the issue, nothing may happen, Weiss said. "Some schools might roll the dice and not do anything, wait and see if someone pushes it," he said. There is a chance that the private school will take the funding, time will pass, and this issue will never get litigated.

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If a parent does push the issue and the school refuses to comply, then the school could be litigated. However, like issues of compensatory services and other areas impacted by COVID, it could be litigated for years and by the time we get answers, this will be over, he said.

"At this stage, who knows? We can guess how [the Office for Civil Rights] or a court would rule, but we're really in some unknowns at this point," he said. "I think the odds of them amending the Section 504 regulations in the next couple of months to add this, I would assume to be unlikely," he said. "I think it's going to work itself out in case decisions and OCR findings."

### **The private school 504 obligation**

Assuming a nonpublic school receives federal funds and is required to comply with Section 504, it's a different obligation than a public school, Weiss said.

"A public school has to develop a 504 plan and then implement it," he said. "A nonpublic school that receives federal funds doesn't have to do that. They just have a general duty to accommodate, more similar to the ADA."

The safest way to do this would be for the private school to get ahold of the Section 504 plan that was created by the student's previous public school and choose to implement that, though that would be way above and beyond what they're required to do, he said.

Additionally, the nondiscrimination provisions of Section 504 would be in effect, Weiss said.

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