EXPERT INSIGHT: Section 504 team's response to requests for continued online learning
By Sherry H. Culves*

A year after COVID-19 forced school systems to shutter their doors and transform overnight to a new model of remote learning, they are now facing a new challenge -- educating and supporting students while they transition to a post-pandemic era. Many school systems have provided students the option over this past school year to attend classes online or in-person. But as COVID-19 numbers are trending in the right direction, many systems are planning for a full return to face-to-face instruction. They are now faced with a new set of disability accommodation requests -- the request to continue in a fully remote program, even when other students have all returned to school. Below are some tips on how to analyze and respond to student disability accommodation requests for continued online learning.

Under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, the following analysis should be used:

1. Is the student disabled?

2. How does the disability impact this individual student?

3. Is a reasonable accommodation necessary for equal access?

4. Does the student's proposed accommodation:

      a. Impose any undue financial or administrative burden?

      b. Require a fundamental alteration to the nature of the program?

5. Is there another reasonable accommodation?

Section 504 teams should engage in an interactive process with the student, their family, and their medical professionals. They should ask for a release to talk directly with the professionals and not just receive a diagnosis or doctor's note.

Share information about the school's programs, including:

- The classroom environment;

- The school's safety measures;

- The current trends and number of COVID cases in the community; and

- The level of transmission of COVID cases in the school.

Ask questions, such as:

• How does the student's disability impact their ability to attend face-to-face instruction?

• Is the doctor recommending that the student not be around others in public?

• What is their recommendation for the student's activities outside of school?

• How long are these restrictions expected to be in place?

• Does the student have a history of severe illnesses and reactions to communicable diseases or is this more speculative?

• How is the student engaging in the rest of life? Are they going to the grocery store? Restaurants? Shops? Vacations? Do they participate in student activities? Attend sporting events? Do they go to the doctor in person? Do they wait in hospital waiting rooms? Have they traveled? Gone to the Airport, Subway, etc.? Did they participate in summer camps?

• Has the student been vaccinated or does the family plan to vaccinate the student? (If applicable.)

Determine whether an online program would be unduly burdensome or a fundamental change to the nature of the program:

• Would allowing this student to continue in the program "remotely" fundamentally change the way the program was intended to be administered in person?

• Would classroom activities and projects need to be changed?

• Would the teacher have to take significant different steps to upload content to an online platform, virtually making them teach the class twice?

• Would the student be isolated and unable to participate in class, and is that a significant component of the grading or structure of the class?

• What was our experience when the class was remote? Did it go off without a hitch, or was it just a band-aid?

Explore whether another reasonable accommodation can provide equal access to education:

• Can the student be given seating away from others?

• Can they be given an opportunity to transition in the hallways at a different time?

• Can they be vaccinated?

• Can they wear a mask?

• Are there other safety measures that can be taken to adequately reduce the risk?

- Can they postpone taking this class until a time when the pandemic has improved?

- Is there an alternative class they can take to meet their graduation requirements that is available online?

The key to surviving a Section 504 or ADA claim is to ensure that the 504 team follows an interactive process and involves the family, medical professionals, and educators in the analysis. As with all decisions, teams should go into the discussion with an open mind and creative outlook and document both the decision that was made and the rationale for it.

Sherry Culves is an attorney at Nelson Mullins Riley & Scarborough in Atlanta, Ga.

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