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SECTION 504 ELIGIBILITY: WHAT SHOULD A SCHOOL DO WHEN IT GETS A DOCTOR'S SCRIPT WITH A DIAGNOSIS THAT PRESCRIBES SCHOOL-BASED SERVICES?

It seems to be happening more and more frequently: parents bring a script from a medical doctor diagnosing ADHD and "prescribing" school-based services. The parents then insist on accommodations and maybe even occupational therapy. What should a school do?

First, do not immediately provide the accommodations as requested or "prescribed." Section 504 of the Rehabilitation Act of 1973 (Section 504) regulations and the Office of Civil Rights (OCR) guidance are clear that a Section 504 evaluation must first be completed by the district to determine whether the student has a disability. The Section 504 regulatory provision at 34 C.F.R. §104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability. In doing so, a district should consider the full educational history of the student prior to seeking to evaluate the student and should also consider if there are red flags to evaluate the student for special education instruction. When a district issues a Permission to Evaluate, whether for special education services or Section 504 services, the district complies with its Section 504 procedural obligations.

If the school team determines based on a review of records and data that there is no reason to evaluate the student for special education services, then the school team could still issue a Permission to Evaluate for Section 504 eligibility only. Schools should have a separate Section 504 Permission to Evaluate form. Once signed by a parent, a school has 60 days to determine Section 504 eligibility, that is, (1) whether the student has a physical or mental impairment, and (2) whether the physical and mental impairment substantially limits a major life activity.

The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. This is not an exhaustive list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii) and also found in the Americans with Disabilities Act (ADA), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Again, this list is not exhaustive. Congress has also provided additional examples of major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. These lists of examples of major life activities are not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be considered a major life activity.

Mitigating measures cannot be considered when determining whether a student has a physical or mental impairment that substantially limits a major life activity. As of January 1, 2009, Congress specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability. Examples include medication, medical supplies, equipment or appliances, low-vision devices (which do NOT include ordinary

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eyeglasses or contact lenses), prosthetics, hearing aids or cochlear implants, use of assistive technology, and learned behavioral or adaptive neurological modifications. The only exception to the mitigating measures analysis is ordinary eyeglasses or contact lenses.

Therefore, it is important that school teams complete their own evaluations for Section 504 eligibility next time they received doctor scripts for school-based services. It is only if a student meets both prongs of Section 504 eligibility that a Section 504 plan should be developed. The plan should include the accommodations a student needs to access the general education curriculum. However, it need not be exactly that what the parents request if the district's evaluation comes to a different conclusion.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.