



Department of Justice and the Office for Civil Rights Target Schools for Violating the ADA and Section 504

Don't Let Your School Become Injured for Failing to Serve Students with Disabilities

Public schools are required to provide a free appropriate public education (“FAPE”) to qualified, school-aged children with disabilities. Although disputes over whether a particular child is receiving a FAPE are routinely addressed through Individuals with Disabilities Education Act (“IDEA”) proceedings, more and more lawsuits that rely on the American with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act (“Section 504”) are being filed against school districts. In addition, the U.S. Department of Justice (“DOJ”) and the Department of Education’s Office for Civil Rights (“OCR”) are increasing their investigations of schools, and are initiating actions against

districts under the ADA and Section 504 to address failures in the educational process.

One example of the heightened scrutiny is the suit filed September 29, 2015 by the DOJ against Gate-Chili Central School District, which is located near Rochester, New York. The DOJ alleges violations of Title II of the ADA arising from the district’s refusal to modify its policies to permit a student to bring her service dog to school unless accompanied by a separate, full-time handler. This lawsuit seeks compensatory damages, out-of-pocket expenses, recovery for pain and suffering, and damages for emotional distress in addition to modification of the district’s policies.

Compliance With Title II of the Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973: Self-Audit Checklist and Best Practices for School Districts

Part 1 Title II and Section 504: General Compliance

The District's policy requires it to provide Free Appropriate Public Education without cost to the person with a disability or his or her parents or guardians (except for fees that are imposed on nondisabled persons or their parents or guardians also). Yes No

The District's policy requires that if it provides personal, academic, or vocational counseling, guidance, or placement services to its students, it shall provide these services without discrimination on the basis of disability. Yes No

The District's policy requires it to undertake to identify and locate every qualified person with a disability residing in its jurisdiction who is not receiving a public education and to take steps to notify those persons and their parents or guardians about the duty to provide FAPE. Yes No

The District's policy requires it to notify parents or guardians about the above procedural safeguards, including their right to examine their child's records, to be notified about evaluation or placement actions, and to an impartial hearing. Yes No

The District's policy explains that all problems or conflicts related to ADA compliance may be addressed using the grievance procedures, including issues involving employees, students, or members of the public. Yes No

The District's policy requires it to provide to all interested people the name, office address, telephone number, and other pertinent contact information for the employee who coordinates ADA compliance. Yes No

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Another example is a case filed in Kentucky against the Kenton County Sheriff's Department which implicates the Covington Independent School District. The DOJ filed a statement of interest in the matter because it involved a sheriff's deputy (a community resource officer) handcuffing students with disabilities as punishment for behavior arising out of their disabilities. In its statement, the DOJ asserted that the ADA applied to community resource officers and sheriffs' departments as well as school districts.

Ultimately, the failure of a school district to appropriately provide for students with disabilities may result in consequences from the OCR, lawsuits by the DOJ, or private lawsuits brought by parents. The costs associated with defending such lawsuits divert precious funds away from educating the students. Districts should devote time now to review their procedures.

To assist in evaluating your district's compliance with antidiscrimination laws as they relate to qualified, special-needs students, SLRMA is pleased to present Compliance with The Americans with Disabilities Act and Rehabilitation Act Self-Audit Checklist and Best Practices for School Districts. This self-audit and best practices guide will help protect your school district from OCR and DOJ investigations and penalties, DOJ lawsuits, and private litigation arising out of the ADR and Section 504. **Download it today.** 

Recent Dispatches in the Newsroom



Log In and Download the Recent Case Summaries That Impact Your School District and Find Out What You May Be Missing

**Carroll v. Lawton Independent School District
2015 WL 6905467 (10th Cir. 2015 - Oklahoma)**

November 10, 2015

At the heart of the dispute in the above-referenced suit is AKC, a minor and student at Pat Henry Elementary School, a public school in Oklahoma's Lawton Independent School District No. 8 (the School District). AKC is autistic and her autism impairs her ability to verbally communicate. She received education assistance under the Individuals with Disabilities Education Act ("IDEA") through an Individualized Education Program (IEP).

In the lawsuit, the AKC's parents (the Carrolls) sued the school alleging that AKC suffered punishments and physical injury as a result of those punishments. The issue before the court was whether the Carrolls needed to exhaust their administrative remedies under the IDEA. Read the full summary to learn whether the relief sought by the Carrolls was available under IDEA so as to require the remedies available during the administrative proceedings...

Read the full Case Summary online at www.slrma.org

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SLRMA's Checklists are tools to help you avoid potentially damaging liability.

In the last quarter, SLRMA's most popular downloads were:

- 1** District Transgender and Gender Non-conforming Student Self-Audit Checklist and Best Practices
- 2** Extracurricular Transgender and Gender Non Conforming Student Policy Checklist
- 3** English Language Learner Services and Education: Self-Audit Checklist and Best Practices for School Districts Part 1
- 4** Educating and Evaluating the English Language Learner: Self-Audit and Best Practices Part 2



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School District Predetermines Placement Denies Student FAPE

Predetermination at IEPs is a frequent charge against school district but often very hard to prove. In the recent case out of Arizona, Deer Valley Unified School District, 111 LRP 71612 (November 1, 2011) case the school district informed the parents in writing what the placement would be, but the team was prepared to hear the parents' position as to why the placement was wrong, and in that way the parents were allowed to "participate" and in the school's view they had not predetermined the placement.

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