



Legal Clips

Report Says Section 504 Rules Cause Confusion for Schools

Students with health or cognitive problems who aren't eligible for services under the Individuals with Disabilities Education Act (IDEA) have protection under another federal law: Section 504 of the Rehabilitation Act of 1973. But school administrators may be confused about evaluating students for Section 504 eligibility, research conducted by a Pennsylvania middle school principal and a law professor shows. "There's a lot of openings for problems and slip-ups," said Rachel A. Holler, the principal of Stewart Middle School in Norristown, Pa., who conducted the research as her doctoral thesis. A report on her findings, written with Perry A. Zirkel, was published in this month's edition of the NASSP Bulletin, a publication of the National Association of Secondary School Principals. Their estimate, based on answers received in 2005 from 549 public school administrators, suggests that about 1.2% of public school students receive Section 504 services only, compared with 12% served under the IDEA. Every student who is eligible for help under the IDEA is also covered under Section 504, which prohibits discrimination against people with disabilities by any agency that receives federal money. Not all Section 504 students, however, are necessarily eligible for special education services. And recent legal decisions suggest that a child who is not eligible for the IDEA is likely not eligible for Section 504 accommodations either, the researchers say.

The survey of principals shows, though, that school leaders are more likely to err on the side of providing accommodations to students anyway. While some schools may "overidentify" Section 504 students, there may be students who are eligible to receive Section 504 accommodations but are not getting them, Ms. Holler said. The best-known and litigated area of special education law is the IDEA, which has produced a deep body of case law, literature, and guidance for teachers, administrators, and parents since its enactment in 1975 as the Education for All Handicapped Children Act. The IDEA deals directly with education, in contrast to Section 504, which covers more areas of public life. A similar but newer law, the 1990 Americans with Disabilities Act (ADA), covers all of the services, programs, and activities conducted by public entities, including state and local governments. Instead of determining whether a child falls into one or more of the 13 disability categories outlined by the IDEA, administrators evaluating a student for Section 504 help must decide if the child has a physical or mental impairment that substantially limits one or more major life activities. For students, "learning" is a major life activity. But complexity creeps in because some disabilities—for example, attention deficit hyperactivity disorder—could merit either special education services or accommodations offered by Section 504. **The "substantial limitation" standard of Section 504 also requires that a student be measured compared with an average peer, not against his or her own potential,**

Mr. Zirkel said. Such a standard makes it difficult for high-achieving students to qualify for a Section 504 plan, he said, since their disabilities appear to place no “substantial limitation” on their learning compared with that of other students.

In the survey, about 60% of the school administrators answered incorrectly that they provide accommodations so that the student could learn up to his or her full potential. Mr. Zirkel said recent legal rulings have tended to make the law more “stingy,” but administrators may still feel compelled to give accommodations as “consolation prizes” to students whose disabilities aren’t severe enough to qualify them for special education. While the IDEA is sometimes criticized as being an overprescriptive law that doesn’t offer enough flexibility to districts, the broad, definition-free nature of Section 504 offers its own pitfalls, said Edward M. Friedlander, the executive director of pupil-personnel services for the 3,400-student Jericho, N.Y., school district. Overidentifying students would not seem to spark the same kind of litigation that schools get into when they withhold services. But the problem with giving Section 504 accommodations too widely, Mr. Friedlander said, is that districts don’t get any federal funding for assistance, as they do with the IDEA. The twists and turns of the law also can be confusing to lawyers and advocates for parents, said Bill Brownley, a lawyer in Fairfax, Va. He agrees that 504 plans are sometimes given out to mollify parents. “And sometimes people think, we’re giving them this prize, but we don’t have to do a lot,” Mr. Brownley said. But once a child receives a Section 504 plan, he or she is eligible for many of the protections that are provided to students through the IDEA, said Charles A. Cognato, the assistant principal of Stetson Middle School in West Chester, Pa.