



BEYOND THE CHARTER APPLICATION: SECTION 504 COMPLIANCE
IN ACADEMIC AND NON-ACADEMIC/EXTRA-CURRICULAR
SETTINGS

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DISCLAIMER: This handout is intended for educational use only. It does not constitute legal advice. If you have specific questions or concerns about any of the issues discussed herein, please seek the advice of legal counsel.¹

The number of charter schools in the country continues to increase. However, many questions that relate to the "now what?" aspect of the successful charter application should realistically be asked and answered prior to the application process. Some of these particular questions relate directly to compliance with federal laws and their respective state counterparts. Although most charter schools are developed and authorized with the understanding that they are to be free from the traditional public school bureaucracy, charter schools are still obligated to comply with federal laws affecting public school districts. When focusing on federal law that relates to students with disabilities, "special education" immediately comes to mind. Depending on whether the local charter authorizer is a local school board or another type of entity, the charter school will either be directly responsible for the provision of special education services or the public school will retain such responsibility. The federal laws implementing special education

¹ *The documents referenced in this article such as forms, scripts, notices and procedures can be acquired by contacting the authors.*

actually refer to and direct these responsibilities.² However, another federal law is often overlooked in the context of daily operations in charter schools.

Section 504

Section 504 legislation prohibits discrimination against individuals who meet the definition of disability under the act and applies to entities that receive federal funding. Two primary requirements of Section 504 for students who have been determined to be eligible for protection and services under the Act are: (1) nondiscrimination and (2) the provision of FAPE. Charter schools whose local public schools retain oversight have the benefit of using the district's Section 504 policies and procedures. Nevertheless, there continues to be an increase in the number of charter authorizers who are other entities. This obligates the charter school to ensure that appropriate Section 504 policies and procedures are in place. The Office of Civil Rights ("OCR") has held that states cannot exempt a charter school from complying with Section 504.³

The Section 504 Referral/Evaluation Process

Section 504 Coordinator: The Charter School should have a Section 504 Coordinator. The identity of this individual should be published and readily available. School staff should be fully aware of the identity of the Section 504 Coordinator whose job description should include being knowledgeable regarding the Charter School's Section 504 responsibilities as well as its policies and procedures regarding Section 504.

Section 504 Referral: The Section 504 Coordinator receives a referral from a parent, student, teacher, campus committee or school official. The document entitled **Section 504 Referral** can be completed or your notes or a parent note can serve as the referral and can be attached to the Referral document. Do not ever mandate that a parent complete a particular document in order to move forward with a referral if you suspect that the student has a disability that substantially limits a major life activity.

When should school staff consider referring a student for Section 504 evaluation?

- *When a student shows a pattern of not benefiting from the instruction being provided;*
- *When retention is being considered for any student;*
- *When a student returns to school after a serious illness or injury;*
- *When the student has a chronic health condition;*
- *When a student is identified as "at risk" or exhibits the potential for dropping out of school;*
- *When a physical or mental impairment of any kind is suspected.*
- *When a parent gives you any of this information or refers the student for a Section 504 Evaluation.*

²34 C.F.R. § 300.209

³ Boston (MA) Renaissance Charter Sch., 26 IDELR 889 (OCR 1997)

Preliminary Review: Upon receipt of a referral, the Charter School's Section 504 Coordinator should conduct a preliminary review of the referral information and determine the next step. If it is determined that there is a reasonable basis for suspecting that the student has a physical or mental impairment that substantially limits a major life activity (qualifies as a student with a disability for purposes of Section 504 eligibility), then the referral process should continue. The District can refuse to evaluate a student to consider whether Section 504 eligibility exists; however, a refusal to evaluate at this stage would likely be a rare occurrence - the exception rather than "the norm." A refusal will only occur if the District has no reasonable basis for suspecting that the student has a disability. In such a situation, the Section 504 Coordinator should notify the parents of the refusal to evaluate.

Parent Information: Parents are provided a Section 504 Packet that includes – (1) Notice of Parent & Student Rights Under Section 504; (2) Parent Notice & Consent for Evaluation Form; (3) Parent Evaluation Data Form

Evaluation Data is Gathered - There is no bright-line rule for what exact data should be gathered or reviewed to determine whether a student qualifies for Section 504 protection. The Campus 504 Committee determines what evaluation information is needed and who will collect the information. The term “evaluation” in the context of Section 504 does not mean “testing.” It is not necessary to "test" a student in conducting a Section 504 Evaluation. However, if the committee determines that formal testing is necessary, a determination of who will do the testing should be made by the Section 504 Committee.

The law does require that the review and decision must be based on information from a variety of sources, e.g. teacher(s), other school staff members, a parent/legal guardian, physician, nurse, other professionals or persons in the community. Gather information from sources that make sense. If the student's suspected eligibility relates to a medical issue such as diabetes or asthma, then input from the school nurse is an obvious necessity. Additionally, documentation and consideration of all available pertinent information, e.g. records, assessment data or medical reports related to the suspected physical or mental impairment, which may be substantially limiting major life activity must occur. It is important to note that the parent's refusal to provide you with any or all of a student's medical records (or other requested documentation) cannot be the sole reason that a student is not evaluated for Section 504 eligibility or found not eligible. In such a situation, the evaluation process should continue with a review of the documentation that the Section 504 committee does have.

Examples of Evaluation Data:

- *Results of Interventions*
- *Achievement Tests*
- *Health Information*
- *Observations*
- *Intelligence Testing*
- *Anecdotal Records*
- *Attendance Record*
- *Psycho-Educational Assessment*
- *TAKS/STAAR information*
- *Portfolio information*
- *Parent Information*
- *Medical Records*
- *Outside Evaluations*
- *Grades*
- *Discipline Records*

**Any special materials, tests or evaluation procedures that are used in the Section 504 evaluation process should be tailored to assess specific areas of educational need that are not racially or culturally discriminatory and are validated for the specific purpose for which they are used.*

Section 504 Evaluation: The Charter School's Section 504 Coordinator notifies and/or convenes the Campus 504 Committee. The committee must consist of the Campus 504 Coordinator and two or more other people who are knowledgeable about the student, evaluation data, and placement options although more individuals can attend. The parent should be invited, but does not have to be present at the meeting. The Section 504 Committee should complete the student's Evaluation using the Section 504 Evaluation Guidelines.

The Section 504 Evaluation consists of the following:

- A review and decision based on information from a variety of sources, e.g. teacher(s), other school staff members, a parent/legal guardian, physician, nurse, other professionals or persons in the community.
- Documentation and consideration of all available pertinent information, e.g. records, assessment data or medical reports related to the suspected physical or mental impairment, which may be substantially limiting major life activity.

-- A meeting conducted by a group of people, including those who are knowledgeable about the child, the suspected disabling condition, evaluative procedures, the meaning of evaluative data, and accommodation/placement options.

Section 504 Reevaluations Periodic reevaluations are necessary at least once every three years unless otherwise determined necessary. Reviews must also be done before any significant change in placement occurs. Additionally, when students move to a new campus, a review should be conducted by the receiving school before the move or within the first nine weeks. A reevaluation should also occur when a student's behavior or grades shift dramatically or when a student may no longer require Section 504 services.

Prior to the Meeting the Section 504 Coordinator Should:

- Contact the parent to provide them information, secure a mutually agreed upon date and time for the meeting and ensure they understand the referral.
- Send Section 504 Packet to the parent confirming the agreed upon date and notify all committee members of the time and place of the meeting. If a committee member cannot attend, they should provide input to be considered by the committee.

At the Meeting, The Section 504 Coordinator Should:

- Welcome participants, make introductions, and review purpose of meeting. See *Section 504 Script*.
- Review the evaluation data such as grades, attendance, discipline record, most recent evaluations, local and state assessments, and other evaluation data.
- Make eligibility determination using *Section 504 Evaluation Guidelines*.
- Provide copies of the *Section 504 Summary* to parents (or adult student). Send to parent if parent not present at the meeting.
- If the student is found eligible under Section 504, a *Section 504 Accommodation Plan* shall be developed win most cases. In the development of the plan, consider reasonable accommodations necessary to provide an equal opportunity for the student to participate in the general curriculum.
- Share the Section 504 Accommodation Plan with all necessary staff members directly involved with the student. Document their receipt of the plan by getting signatures.

Prior Written Notice: After the Section 504 Evaluation, the parents should be notified regarding the Section 504 Committee's decisions using the Summary and Prior Written Notice Form. This form should be provided to the parent even if the parent was present during the meeting.

Section 504 Accommodation Plan: Provide all administrators, teachers and counselor(s) with a written copy of the student's Accommodation Plan. Use the signature lines on the plan to acquire written acknowledgement from everyone receiving a copy of the plan.

Section 504 Due Process Hearing Procedures - Section 504 of the Rehabilitation Act of 1973 provides the right to an impartial due process hearing if a parent wishes to contest any action of the District with regard to a child's identification, evaluation, and placement under Section 504. This provision is found within 34 C.F.R. § 104.36. If you request a Section 504 hearing with the District, you have the right to personally participate and to be represented at the hearing by an attorney or advocate at parent expense. Contested actions or omissions that are appropriate for a Section 504 hearing with the District should involve either identification, evaluation or placement issues involving a disabled child under Section 504.

Section 504 in NonAcademic/Extracurricular Settings

Students protected by Section 504 must have equal access to non-academic services, including but not limited to recreational and competitive team athletics, clubs, and field trips. These guarantees extend beyond the classroom and also include the provision of non-academic and extracurricular services in a manner so as to afford students with disabilities equal opportunities for participation. This does not mean that students with disabilities must be automatically allowed to participate in every such activity or event, but that equal opportunities for participation must be provided.

While it would be impossible to reflect on every potential situation, examples are provided to highlight the diversity of issues that can arise in this area and provide district personnel with a sense of the steps they must take to ensure students with disabilities have access to school-related extra-curricular activities, as well as protect the district from liability. By no means is the list that follows or accompanying examples exhaustive, nor are the categories exclusive to each other.

Eligibility Issues

A. Eligibility for the Extracurricular Activity or Program

Section 504 applies only to persons who are otherwise qualified and considered to have disabilities as defined in the act. Issues often surround this threshold.

❑ *What are the requirements for student participation in the particular extracurricular activity?*

Some activities merely require that students sign up to participate. Others require a student to have particular skills in order to be a part of a particular organization or activity. If a student requests accommodations for a particular activity or event, some of the first questions that you should ask relate to eligibility for the activity.

Example: OCR concluded that a school had not violated Section 504 by not providing accommodations for a student who was unable to read sheet music but wanted to participate in the school marching band. The ability to read music was a requirement for participation according to school policy. The district did not have to provide supplementary aids and services that would allow the student to participate in the marching band without having met the qualification of sight-reading ability. *Greenwood (SC) School District 52*, 49 IDELR 233 (2007)

❑ *If signing up for the activity is all that is required, are disabled students receiving notice regarding these activities or events?*

Many of the cases being heard by the Office of Civil Rights ("OCR") arise from preventable situations in which students with disabilities did not receive notice about school events. A significant implication of the opportunity for affected students to participate is the provision of notice of these opportunities. It is particularly important that you take into consideration the special needs of your disabled population in order to get relevant and useful information disseminated effectively and in timely fashion.

Example: OCR investigators in the Southern Division concluded that a Florida School district had not sufficiently communicated information about afterschool activities to students with qualifying disabilities in a manner that was not in compliance with Section 504. The complainant alleged that students in the self-contained Exceptional Student Education (ESE) class failed to receive notice about numerous school activities and thus were denied the opportunity to participate. Notably, the district had employed a large number of methods of communicating school activities to the entire student body which included: a marquee outside the school building; a regularly-updated website announcing all student activities; a scrolling system appearing on television classrooms; morning and afternoon audio announcements to the entire school; and an automated telephone messaging system. To supplement, the ESE teacher sent home newsletters approximately once per month to her students' parents. In finding the district not in compliance, OCR acknowledged the numerous mechanisms through which the district attempted to communicate school activity, but emphasized that the information was not presented to the affected students in a way *that could be effectively utilized* because of the nature

and severity of their disabilities; these students might have seen the information on the marquee or heard the information on the announcements, but could not understand this information independently. OCR pointed out that although the ESE teacher sent home information about the existence of such clubs and activities, the newsletter did not provide parents sufficient information on *how* to participate. *Polk County (FL) Schools*, 54 IDELR 331 (OCR 2009)

**Polk County* was issued by OCR's Southern Division. On face value, Polk County High School went to extraordinary lengths to communicate school activities, yet still left it vulnerable to liability. It is critical that schools consider the individualized needs of their disabled population students when developing communication plans regarding extracurricular activities.

B. Eligibility as a Disabled Student under Section 504

It is feasible that some students may not be “substantially limited” under the act in a major life activity by their disability thus, not eligible for services under Section 504 as a student with a disability, including in the nonacademic setting. This commonly occurs when a student claims a disability in the context of an extracurricular activity although the student is not on record as being a student with a disability.

- ❑ *Is the student already qualified for Section 504 Services?*
- ❑ *If not, Section 504 procedures regarding identification and evaluation should be followed.*

Example: The parent asserted that the student's difficulties stemmed from his ADHD, however OCR found there was insufficient evidence to establish a qualifying disability. The student did not have an IEP or a Section 504 plan in place and there was no record of the parent ever requesting a disability evaluation. While the parent claimed that she had notified the band director about the student's ADHD, OCR explained that was insufficient to entitle the student to accommodations. In its decision, OCR emphasized “[i]nforming the band director of an impairment and difficulty reading music does not, without providing him supporting information indicating how the impairment and/or difficulty *substantially limits the student in a major life activity*, constitute notice of disability.” In other words, the student had no record of difficulties in other areas of school based on this disability, had no record of having raised this issue in any area of his educational experience prior to his desired participation in the high school marching band. The parent could not establish the existence of a qualifying disability. *Greenwood (SC) School District 52*, 49 IDELR 233 (2007)

- ❑ *If the student is already qualified for Section 504 Services, have the appropriate individuals been provided with a copy of the student's Section 504 accommodation plan?*

Effective communication between district personnel can play an important role in meeting the requirements of Section 504. If the student’s IEP or Section 504 Plan requires the provision of supplemental aids and services that might also be necessary to allow a student to participate in

extracurricular activities, the denial of those services is likely to amount to a denial of FAPE. Additionally, if a student is already receiving Section 504 accommodations in the regular school setting, the student or parent's request for accommodations in another aspect of their educational programming should result in a review of the student's Section 504 plan that is already in existence to determine whether the accommodations are already required or whether additional accommodations or services may be warranted in order to allow the student to participate in the extracurricular activity. In this regard, it is noteworthy that often times personnel who run extracurricular activities, particularly if they take place after school by non-faculty members, might not be in the loop on intra-school communication. This underscores the importance of establishing good communication policies. However, remember that confidentiality issues require either an Interagency Agreement or parent consent in order to share information such as a Section 504 plan with non-faculty members.

Example: OCR found a district in noncompliance with respect to golf team tryouts. The affected student was eligible for 504 services based on his classification of Emotionally Disturbed. His IEP required modifications that the student was to be the last golfer in the last group throughout the two-day tryout process. The school did not have a written policy in place establishing procedure for communicating students' IEPs or 504 Committee reports to relevant coaches or staff members. The IEP also required a coach to monitor the student's group and remind him to concentrate and stay focused on each shot. Even when informed of this requirement, the head coach objected stating that it was important for golfers to be accustomed to golfing in different orders – as would occur in tournament play – and more importantly, that the encouragement required by the IEP on each shot would amount to coaching during play, a direct violation of the rules of golf. OCR rejected both arguments, suggesting that allowing this modification for one individual would not be a fundamental change to the program. *Eastern Lebanon County (PA) School District, 55 IDELR 236 (OCR 2010)*

** It is noteworthy that if a Section 504 Committee (or IEP Team) determines that a student should have a particular accommodation in a class or extracurricular activity, that the teacher or coach who will be expected to implement that plan be offered an opportunity to participate in the decision-making process by providing input, attending the meeting, and/or being informed of the accommodation decision.*

❑ *Policies and procedures should not be applied in a manner that automatically excludes students because of a disabling condition.*

It particularly important that schools consider a homebound student's ability to participate in extracurricular activities, and be careful not to establish absolute policies that exclude them from participation. A reasonable concern may arise when a student is homebound because of an illness. Nevertheless, schools should steer clear of establishing any type of blanket policy excluding such students from extracurricular participation. If a student is eligible for homebound services, then he or she is likely to have a temporary disabling condition, thus triggering Section 504 protections. Automatically disallowing homebound students to participate in school activities can amount to discrimination. Provide homebound students with timely information about school activities and make individualized determinations about a student's ability to participate in such activities when they return to school and/or from their home. Examples of

appropriate accommodations, depending on the activity, might be to allow the student the opportunity to sign up and begin participating upon their return to school or to "try-out" via video. This recommendation does not mean that homebound students must be allowed to actively participate in every activity that they might be interested. Obviously, active participation in the Spanish Club from one's bedside is possible while active participation on the Wrestling Team while convalescing may not be possible. However, freshman participation requirements for a student who was homebound during freshman year might be waived as an appropriate accommodation.

It is also not unusual for a discrimination claim to arise when a student is cut from a team for having too many unexcused absences. While this issue hinges on whether the absences are attributable to the student's qualifying disability, schools can still protect themselves from liability by putting attendance policies in writing and advising coaching staffs to apply these standards uniformly.

Example: An important ruling from the OCR, Southern Division highlights the standard for treating absences when the affected student is a qualifying student under Section 504. In *Shelby*, the complainant alleged that the District discriminated against her daughter on the basis of her disability, stating that her twenty-one unexcused absences from volleyball practice were attributable to her disability. Under district rules, three unexcused absence resulted in being cut from the team. In its discussion, OCR made a careful distinction between those absences approximately attributed to the student's disability and the three absences arising from a three-day suspension for fighting. In ruling that the district did not discriminate against the student, OCR also made special note of the district's uniform application of the rule, as other nondisabled students had also been dismissed from team sports for violation of the same rule. *Shelby County (AL) 37 IDELR 41 (OCR 2002)*

** Good documentation was key to the favorable decision for the school in this case.*

Specific Circumstances

A. Team Sports

Again, a person with a disability must be otherwise qualified to do something before Section 504 protections apply. If a disabled student wishes to participate in an activity for which he or she is not otherwise qualified to participate, with or without accommodation, disallowing the student to participate is not considered discrimination.

□ *Does the student meet age requirements?*

The eligibility standards for athletic contests are established by state or local level governing bodies or decision-makers. Typically, eligibility rules and contest regulations are designed to keep competition equitable and to maintain activities in proper perspective. It is the responsibility of each school to see that students do not compete unless they comply with all eligibility rules. One such rule that has come under scrutiny over recent years is the age eligibility for competitive team sport participation. In making determinations, schools must carefully consider whether a delay in education has been created by a disability or another disqualifying reason.

❑ *Does the student have the skills to make the team or squad with or without accommodations?*

While anti-discrimination laws prohibit unequal treatment of individuals with disabilities, the laws do not guarantee a right to play a particular sport. Generally, school districts are permitted to establish skill-based eligibility criteria for participation in extracurricular activities, provided that the criteria are rationally related to the purposes and goals of the program. However, school districts should be aware that such criteria cannot be inflexibly implemented. The District may be required to modify *non-essential* requirements of the program to accommodate students with disabilities so as to ensure equal opportunity for participation. A district may also be required to furnish accommodations for tryouts, as well as throughout the season. The benchmark question in a Section 504 situation is whether the proposed accommodation is “reasonable.” An accommodation is not reasonable if it fundamentally alters the nature of the program.

Examples: OCR determined that a school district discriminated against a student with a qualifying disability when it did not allow her to try out for the cheerleading squad. The district high school required a 2.8 minimum GPA for cheerleading. The affected student’s cumulative GPA was approximately 2.4. OCR found that the student’s failure to obtain the required GPA was affected by her disability. In its analysis, OCR looked to the cheerleading requirements at surrounding schools (which varied) and other athletic teams within the school where the GPA requirements also varied. In concluding that the district discriminated against the student, OCR reasoned that in addition to the student’s disqualification being attributable to her disability, and that she was otherwise qualified, a modification of the 2.8 GPA requirement *would not fundamentally alter* the nature of the program. *Northshore* (WA) 48 IDELF 199 (OCR 2006)

OCR considered a case in which the district agreed to provide student with accommodations during cheerleading tryouts, including the opportunity to videotape the instructions and demonstrations so as to provide her with additional time to learn the routines. *Marion County (FL) School District*, 37 IDEL 13 (OCR 2001)

The head coach in the Eastern Lebanon County case objected to the student's accommodations, stating that it was important for golfers to be accustomed to golfing in different orders – as would occur in tournament play – and more importantly, that the encouragement required by the IEP on each shot would amount to coaching during play, a direct violation of the rules of golf. OCR rejected both arguments, suggesting that allowing this modification for one individual would not be a fundamental change to the program. *Eastern Lebanon County (PA) School District 55 IDELR 236 (OCR 2010)*

B. Field Trips

Generally all federally funded school programs are subject to Section 504 and a disabled student may not be excluded from field trips solely due to the student's disability. Additionally, OCR has generally required districts to provide disabled students with the same accommodations on field trips that are available to the student on campus.

❑ *Who is eligible to participate in the field trip? Everyone in a particular grade? Everyone in a particular class? Everyone with perfect attendance? Does the student's disability cause the student to miss school or are absences unrelated to the disability?*

In instances where all students are eligible to participate in a field trip activity, a disabled student must be provided the accommodations necessary to participate.

In contrast, where the school imposes rules or standards for participation, a disabled student wishing to attend must be able to, with or without accommodations, meet the same requirements. A student may also be legally excluded from a field trip for curricular reasons.

Examples: A second-grader with autism was excluded from attending a second grade field trip to a local museum. Although the student had participated in some activities in the general education second grade classroom each week, the trip supplemented the teacher's social studies unit, a part of second grade curriculum in which the affected student did not participate. OCR determined that excluding this student from the field trip did not amount to a Section 504 violation. OCR reasoned that the 504 regulations require participation in activity or services when the disabled student meets the essential requirements for participation in the activity in question.⁴ OCR found this student not to have met that threshold. The student did not participate in the regular classroom social studies curriculum and had received an adapted curriculum in a separate classroom. OCR concluded that the student was therefore not a qualified student with a disability with respect to field trip. *Troy (MI) School District, 39 IDELR 162 (OCR 2003)*

Lindenhurst Schools offered a three-day field trip for 8th grade students contingent upon a student receiving all passing grades during a particular grading quarter. This condition applied

⁴ 34 C.F.R. § 104.3(1)(4)

equally to all 8th grade students. The affected learning disabled student passed all his classes except mathematics. The district responded by disallowing the student from attending the trip. In alleging discrimination, the parent argued that her son's disability prevent him from receiving a passing grade in that class. OCR rejected this argument, pointing to the student's IEP that was implemented that was designed to meet the student's needs and included a 1:1 aide in math. Additionally, the academic requirement had been applied uniformly to all 8th grade students. *Lindenhurst (NY) Union Free School District, 39 IDELR 197 (OCR 2003)*

- ❑ *Has the field trip planning included checking site accessibility for all students attending? This can be handled easily by reviewing the location's website and asking and questions regarding accessibility. Has this been documented?*
- ❑ *Are the appropriate aides or additional services being provided on the trip?*

While parents of disabled students can accompany class field trips as chaperones and often will do so as any other parent might, OCR has held that the parent of a disabled student cannot be forced to attend and the attendance of a parent does not alleviate a school of its obligations under Section 504.

- ❑ *If a student is excluded from a trip for a health or safety reason have legitimate and individualized reasons for administration's concerns been documented? Have alternative participation opportunities been considered?*

A school district may legally prohibit a disabled student from attending a field trip if teachers or administrators believe that participating will present an unacceptable risk to the student's health or safety. However, districts should be prepared to point to legitimate and documented reasons that have been assessed on an individualized level that establish the need for the exclusion. A blanket statement without any real support for such a determination will not suffice.

C. After School Non-Academic Programs

Students with qualifying disabilities must generally receive equal opportunities to participate in non-educational services such as district-sponsored day care, afterschool care, and summer recreational programs. You should ensure that eligibility requirements for non-educational programs, if they exist, are closely related to the purposes and goals of the program. Failure to do so may suggest discrimination if the requirement tends to consistently exclude students with disabilities. Under very limited circumstances, a district will be relieved of its duty to provide auxiliary services to a qualifying student under Section 504 when a third party provider is involved; however, these circumstances are typically extraordinary and a truly independent relationship must exist.

Example: Contrary to a parent allegation, OCR found that a Mississippi school district had not violated Section 504 in declining to provide an aide to a disabled student that would have allowed him to participate in an after-school program, run by the local YMCA on school property. In its reasoning, OCR was meticulous in analyzing the relationship between the after-school program, operated by the YMCA and the district using a two-prong test.

First, OCR considered the operational relationship between the two organizations, establishing independence between the two, pointing out that the YMCA received no financial support from the district – and in fact paid rent to the district for use of its facilities -- hired its own personnel, marketed its programs without district support, and independently managed the program. Under the second consideration, OCR made special note that the YMCA programming was primarily recreational and shared no educational nexus with the district. Under these circumstances, OCR concluded that, even though the program took place on school grounds, the district was not required to provide Section 504 services because the program was operated, managed (both with respect to personnel and financial matters) by an *independent* third party. *Vicksburg Warren (MS) School District*, 46 IDELR 200 (OCR 2006)

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