

10 Tips for Ensuring Students With Disabilities Receive Equally Effective Emergency Services

In a recent Ohio case, the United States Department of Education, Office for Civil Rights (“OCR”) made clear that school districts must provide emergency services to disabled students that are just as effective as those provided to non-disabled students. *See Beavercreek City School Dist.*, OCR Complaint No. 15-12-1080. In that case, OCR received a complaint that a district’s “protect-in-place” procedure for students with mobility impairments was less safe than the district’s procedure to evacuate other students in a fire emergency. During its investigation, OCR determined that mobility impaired students would remain on the second floor of the building with supervising adults until the fire department arrived to evacuate them. The complaining party thought the procedure was unsafe because the second floor rooms lacked adequate ventilation and communication systems, and several students had respiratory issues that could be exacerbated by smoke inhalation. The district was also accused of failing to properly communicate its policy to parents and teachers, and failing to maintain a tornado and lockdown policy for disabled students with particular needs.

Responding to the allegations, the district explained that the fire department was aware of the “protect-in-place” plan, and that the policy designated two staff members and back-ups to supervise students. The procedure was to be kept with each student and in the teacher’s “crisis folder.” A handwritten note on the policy required that staff do whatever was necessary in a true emergency to keep students safe. The district also explained that the students’ parents were notified of the policy. Last, the district maintained a list of students with limited mobility and to whom the “protect-in-place” policy would apply. Although disputing that its procedures were unlawful, during the investigation, the district decided to voluntarily change its emergency procedures.

OCR explained that, under Section 504 of the Rehabilitation Act of 1973 (“Section 504”), a school district must ensure that students with disabilities have an equal opportunity to benefit from services provided to other students, including evacuation procedures. Thus, if the procedures for non-disabled students are less effective for disabled students, the district is responsible for providing different but equally effective services. The Americans with Disabilities Act also requires a school to make reasonable modifications to its policies, practices, and procedures when modifications are necessary to avoid disability discrimination, unless making the modification would fundamentally alter the nature of the service. With these laws as guide, therefore, OCR and the district agreed the school would revise its emergency procedures.

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10 Tips *continued*

Considering the outcome of this case, school districts are well advised to examine their own emergency procedures, ensuring that, among other preparedness activities, they:

1. Provide all disabled students with the same level of services in emergency situations as provided to their non-disabled peers;
2. Provide the list of students and his or her particularized needs to emergency services, but only after receiving consent from parents (or the student, if he or she is over 18 and without a guardian) for that disclosure and documenting what was disclosed, and to whom it was disclosed and when. Generally, the Family Educational Rights and Privacy Act (“FERPA”) prohibits the disclosure of personally identifiable student information without parent consent, even in emergency preparedness activities. Where there is a threat of an actual, impending, or imminent emergency, however, schools can disclose, in a limited way, such information if necessary to protect individuals’ health or safety. As a result, schools should seek cooperation and consent from parents to ensure emergency services departments have all information necessary to assist in an emergency;
3. Develop a written plan for each student with unique needs during an emergency, including the student’s name, those responsible for that student, equipment needed to assist in an evacuation, and a floor plan of the building. Keep a copy of that plan, available for reference, in a private but easily accessible place – for example, with a student’s emergency card;
4. Have policies and procedures in place for various emergencies, including fire, tornado, lockdown, drills, and other emergencies;
5. Maintain a list of students, by school, who will need evacuation assistance or any other type of emergency assistance, and review the list at least on a yearly basis;
6. Determine what short-term accommodations can be made for students with temporary disabilities (e.g., a broken leg);
7. Examine each disabled student individually and according to his or her needs in an emergency. Some students with special needs may not require any modification to the policies and procedures for non-disabled students, but others certainly will (e.g., a blind student needing assistance in an evacuation, or a student with autism needing specialized instruction during drills or in preparation for them). A student’s IEP or 504 Team should meet, when necessary, to discuss the emergency preparedness procedures and services for special needs students. The IEP Team might also consider whether the procedures and services should be incorporated into the IEP (e.g., as part of a goal or accommodation);
8. Communicate the district’s policies and procedures to all necessary school personnel, including, for example, those in charge of coordinating an evacuation, faculty and staff who serve the student, parents, the principal, and substitutes. Again, that requires districts to consider the general policies and procedures for non-disabled students to determine how to provide equivalent services for disabled students;
9. Ensure that the District tests its policies and practices to verify they work. That includes preparing students for drills and participating in them, as well as examining evacuation equipment; available transportation; testing the parent-notification system to decrease anxiety during a disaster; assessing whether the classroom location of students with disabilities ensures the best response time in a disaster; and examining whether the district has a “Plan B” if the first evacuation procedures fails;
10. Ensure there is a procedure in place to make substitute personnel aware of the policies and procedures for disabled students.

Of course, this is a complicated issue, as it requires districts to examine school-wide policies and whether they must be altered for particular students. With student safety at stake, however, OCR will look critically at such policies, and so should school districts.