

# **THE ARCHDIOCESE OF SAINT PAUL AND MINNEAPOLIS**

## **SCHOOL LAW DAY**

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# **SPECIAL EDUCATION PRIMER**

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**NOTE:** The information set forth in these materials is intended to provide an outline of the law existing as of the presentation date. It is not intended as, nor should it be considered, "legal advice." If you are presented with a specific issue, you should consult with legal counsel.

## **SPECIAL EDUCATION PRIMER FOR CATHOLIC SCHOOLS: MEETING YOUR LEGAL OBLIGATIONS TO ACCOMMODATE DISABLED STUDENTS**

### **I. INTRODUCTION**

Private schools have obligations under state and federal special education and disability laws. While the obligations for private schools are not as extensive as obligations of public schools, they still exist, still require modifications to programming, and can still create legal liability. Because so many educators and administrators are aware of the public school requirements to educate and accommodate disabled students, they often overlook the obligations of private schools.

These obligations come first from the state law and then—in some cases—from the federal law.

In Minnesota, the Minnesota Human Rights Act (MHRA) prohibits private schools from discriminating against disabled students. It also requires schools to ensure physical and program access for disabled students. Ensuring program access can entail providing certain accommodations to disabled students.

In addition, any private school that receives federal funds is bound by the requirements of Section 504 of the Rehabilitation Act of 1973. Section 504 prohibits discrimination against a child who has a disability or is regarded as having a disability, and may require schools to modify programs and provide access to educational opportunities.

When making decisions about accommodations for students, schools need to keep these laws in mind.

### **II. MINNESOTA LAW PROHIBITS SCHOOLS FROM DISCRIMINATING AGAINST STUDENTS AND REQUIRES SOME ACCOMMODATIONS.**

The MHRA prohibits educational institutions, including a private school, from discriminating against persons with disabilities. Minn. Stat. § 363A.13, subd. 1 (prohibiting discrimination by educational institutions); Minn. Stat. § 363A.03, subd. 14 (defining “educational institution” as including private elementary or secondary schools). More particularly, under Minn. Stat. § 363A.13, subd. 1,

“It is an unfair discriminatory practice to discriminate in any manner in the full utilization of or benefit from any educational institution, or the services rendered thereby to any person because of . . . disability, or to fail to ensure physical and program access for disabled persons.”

Schools cannot discriminate against disabled students through exclusion, expulsion, or admission. “It is an unfair discriminatory practice to exclude, expel, or otherwise discriminate against a person seeking admission as a student, or a person enrolled as a student because of . . . disability.” Minn. Stat. § 363A.13, subd. 2. Accordingly, situations relating to the expulsion or exclusion of a disabled student need to be handled with careful judgment.

Private schools in Minnesota are not only prohibited from discriminating against disabled students, but must also ensure physical and program access. Minn. Stat. § 363A.13, subd. 1. The statute provides some examples of what program access does and does not include. But the list is not exhaustive. Under the MHRA, program access includes: providing taped texts, interpreters or other methods of making orally delivered materials available, readers in libraries, adapted classroom equipment, and similar auxiliary aids or services. *Id.* Program access, under the MHRA, does not include: providing attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature. *Id.*

### III. FEDERAL LAWS CAN APPLY TO PRIVATE SCHOOLS AND ALSO PROHIBIT DISABILITY DISCRIMINATION AND REQUIRE ACCOMMODATIONS.

Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits discrimination based on disability.

#### A. Purpose of Section 504

Section 504 applies to entities receiving federal funds, and is meant to prohibit those entities from discriminating against individuals with disabilities. In the educational context, Section 504 prohibits schools from discriminating against disabled students and generally requires schools to ensure that disabled students have the same educational opportunities and benefits as those provided to nondisabled students.

Under Section 504:

“No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....”

29 U.S.C. § 794(a).

## B. Section 504's application to private schools

Section 504 applies to private schools that receive “federal financial assistance,” regardless of whether those schools are sectarian or nonsectarian. 29 U.S.C. § 794(b)(3)(A)(ii). The term “federal financial assistance” is broadly defined by government regulation. 34 C.F.R. § 104.3(h). For our purposes, it is sufficient to understand that it means any funds from the government, including a grant, loan, or contract (other than a procurement contract or a contract of insurance or guaranty) and any other arrangement in which the Department of Education provides services, property, or funding to a school.

Private schools often assume they are not a recipient of federal funds; and that as such, Section 504 does not apply to them; and they, therefore, have no obligation to assist a student with disabilities. That logic is flawed for at least two reasons. First, it ignores the application of the MHRA, which may require such accommodations. Second, it too quickly dismisses potential application of Section 504. Under the Section 504, a school is considered to be a recipient of federal funds, even if it is not the direct recipient of the funds and receives the funds indirectly. Federal funding can be received directly and indirectly through a variety of different avenues. Common examples include:

- School lunch programs:
  - In *Russo v. Diocese of Greensburg*, No. CIV.A09-1169, 2010 WL 3656579, at \*7 (W.D. Pa. Sept. 15, 2010), the court found that both the Diocese and the Catholic high school could be sued under Section 504 and Title IX due to their receipt of funds as part of the National School Lunch program and E-Rate program.
  - In *Hunt v. St. Peter School*, 963 F.Supp. 843 (W.D. Mo. 1997), a Catholic school was required to comply with Section 504 because it received federal funds each year through the Department of Education's Title I Program and the Department of Agriculture's National School Lunch and Breakfast Programs.
  - In *Ireland v. Kansas Dist. of the Wesleyan Church*, 1994 WL 413807 (D. Kan. 1994), a private school was found to be a recipient of federal funds where it was reimbursed for food it provided to children.
- Grants for drug-prevention programs:
  - In *Thomas v. Davidson Acad.*, 846 F.Supp. 611 (M.D. Tenn. 1994), a private school was found to be a recipient of federal financial assistance because it received several grants, including grants from drug-prevention and teacher-training programs.

- Placements through public schools:
  - In *P.N. and G.N. v. Greco*, 282 F.Supp.2d 221 (D. N.J. 2003), a private school was required to comply with Section 504. The private school indirectly received federal funds, in the form of tuition payments, because the local public schools had placed disabled students at the private school.
  
- Use of federally funded vouchers:
  - In *Spann v. Word of Faith Christian Center Church*, 589 F.Supp.2d 759 (D. Miss. 2008), a Mississippi church was required to accommodate an autistic boy in a church-operated preschool, because one of the parents at the school had used a federally funded voucher to pay the child's preschool tuition. The church had not received the funds directly from the federal government, but had received them through the State of Mississippi, which had served as a conduit for funds that were supposed to be disbursed to eligible families in need of assistance to pay for child care.
  
- Other possible examples:
  - Money for text-books, at-risk youth programs, educational reform programs, programs designed to enable students to meet national educational goals, technology grants, government contracts, government loans, transportation, childcare centers that receive government subsidies.
  - In *Russo v. Diocese of Greensburg*, No. CIV.A09-1169, 2010 WL 3656579, at \*7 (W.D. Pa. Sept. 15, 2010), the court found that both the Diocese and the Catholic high school could be sued under Section 504 and Title IX due to their receipt of funds as part of the National School Lunch program and the E-Rate program. The E-Rate program is related to a federal telecommunications act and provides discounted rates and grants relating to telecommunications (such as a fiber optic network).

Generally speaking, the amount of the funding is irrelevant. There are some courts which have apparently concluded that some amounts of funding are so small that it is not appropriate to conclude that the school is a recipient of federal funds for purposes of Section 504. *Bercovitch v. Baldwin School, Inc.*, 133 F.3d 141, 152 n.13 (1st Cir. 1997); *Marshall v. Sisters of the Holy Family*, 399 F.Supp.2d 597, 603 (E.D. Pa. 2005). But these courts are clearly in the minority. There is no statutory basis for such an exception. *K.H. v. Vincent Smith School*, 2006 WL 845385 (E.D. N.Y. 2006). Accordingly, prudence dictates that when a parish school receives federal funds it should consider compliance with Section 504 to be mandatory.

### C. Section 504's requirements for private schools

As explained in more detail below, Section 504 requires—among other things—that private schools make “minor adjustments” to their programs to ensure access to disabled students. There is no bright line rule or test for what qualifies as a minor adjustment.<sup>1</sup> Instead, the inquiries tend to be highly fact specific. Some courts hold that a minor adjustment is akin to the reasonable-accommodation standard which is applicable to public schools (and which applies in other contexts such as the ADA).

## IV. AN APPROACH FOR RESPONDING TO REQUESTS FOR ACCOMMODATIONS

In light of the state and federal requirements, private schools cannot simply dismiss requests for accommodations or conclude that IEPs, Section 504 plans, or service plans have no application or impact on the school. Nor can the school simply assume that it has no obligation to assist or accommodate a student with a disability.

When a school learns that a student has a condition that may constitute a disability, the school must address the issue and determine what, if any, actions are necessary. Throughout that process, the school should document in writing all communications between the school's staff and the parents. This can include keeping copies of any letters or emails relating to the student that you receive from parents, public school officials, or others; maintaining copies of evaluations, progress reports or report cards; keeping copies of IEPs, Section 504 plans, or other services plans; and maintaining a telephone log.

### A. Awareness of a disability

A school can become aware of a disability or a need for an accommodation through a variety of avenues, such as the parent, teacher, public school, counselor, or a social worker.

A school only has a legal duty to accommodate a student or modify its programs if the student has a disability. From a legal perspective, that generally means that the student must have a condition or impairment that substantially limits a major life activity. Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. 34 C.F.R. § 104.3(j)(2)(ii).

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<sup>1</sup> Although Section 504 refers to “minor adjustments” and the MHRA refers to “program access,” these materials generally use the term “accommodations.”

Disabilities can include 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. 34 C.F.R. § 104.3(j)(2)(i)(A). It can also include mental or psychological disorders, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 34 C.F.R. § 104.3(j)(2)(i)(B).

- Some examples of diseases or conditions that likely qualify as a disability under Section 504 are speech and hearing impairments, cerebral palsy, epilepsy, cancer, heart disease, diabetes, HIV/AIDS, arthritis, ADD/ADHD, and specific learning disabilities (such as dyslexia). Depending on the severity and cause, other conditions might also qualify as a disability, including: severe allergies (including nut allergies), asthma, obesity, and social maladjustment.
- Some examples of less obvious, mental impairments that might rise to the level of a disability include: chronic depression, bi-polar disorder, manic/depression, social phobia, panic disorders, obsessive compulsive disorder, schizophrenia, attention deficit disorder, or post-traumatic stress disorder.
- Some examples of characteristics which probably are not disabilities include: poor judgment; quick temper; cultural, economic, or environmental disadvantages; stress; or depression that is not the result of a documented physiological or mental disorder.
- The law identifies a number of disabilities that qualify a student for special education services under IDEA, and this list may inform schools as to whether the child has a disability.

- Under IDEA, 34 C.F.R. § 300.8:

A child with a disability means a child evaluated in accordance with Sec. 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as 'emotional disturbance'), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

- Under Minnesota’s special education laws, Minn. Stat. § 125A.02:

Subdivision 1. Child with a disability.

“Child with a disability” means a child identified under federal and state special education law as deaf or hard of hearing, blind or visually impaired, deafblind, or having a speech or language impairment, a physical impairment, other health disability, developmental cognitive disability, an emotional or behavioral disorder, specific learning disability, autism spectrum disorder, traumatic brain injury, or severe multiple impairments, and who needs special education and related services, as determined by the rules of the commissioner. A licensed physician, an advanced practice nurse, or a licensed psychologist is qualified to make a diagnosis and determination of attention deficit disorder or attention deficit hyperactivity disorder for purposes of identifying a child with a disability.

Subd. 1a. Children ages three through seven experiencing developmental delays.

In addition, every child under age three, and at local district discretion from age three to age seven, who needs special instruction and services, as determined by the rules of the commissioner, because the child has a substantial delay or has an identifiable physical or mental condition known to hinder normal development is a child with a disability.

Subd. 2. Not a child with a disability.

A child with a short-term or temporary physical or emotional illness or disability, as determined by the rules of the commissioner, is not a child with a disability.

The above statutes, which deal with special education, can be helpful in ascertaining whether a child may need accommodations. But laws regarding accommodations under Section 504 and the MHRA reach beyond these types of conditions.

As you can see, there is a substantial amount of legal analysis that can go into determining whether a particular condition meets that standard under the law. But a school that becomes aware of a student with a disability or receives a request for accommodation should not get caught up in that analysis. Instead, it should gather information regarding the student's condition. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons.

- Be sure to obtain information from a variety of sources, including parents, teachers, public school, counselors, social workers, a 504 coordinator, IEP team (if applicable) and medical providers.
  - It can be helpful to set up a meeting to meet with these parents and the other people involved.
  - Schools can consider a physician's medical diagnosis, aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior.
  - Request copies of any IEP or 504 plan.
- Encourage, in writing, the family to contact public school authorities for information regarding the student's rights to services from the public school. Public school districts have certain obligations for students in private schools, including to conduct evaluations and determine eligibility for special education. Such evaluations can be helpful for the private school in evaluating any accommodations that it might make.

**Note:** Special education may be provided to students attending private schools as well as public ones. Under Minn. Stat. § 125A.18, students eligible for special education cannot be denied special education services on a shared-time basis by their resident public school districts because the students attend a nonpublic school. The district determines the location of services on a student-by-student basis, and transportation for such services is to be provided by the district. *See also Osseo Public Schools, ISD No. 279* (MDE Complaint No. 14-019C (Feb. 2014)) (MDE concluded that not all special education students who are parentally placed at private schools can be denied special education services); *Indep. Sch. Dist. No. 281, Robbinsdale v. Minn. Dep't of Educ.*, 743 N.W.2d 315, 325 (Minn. Ct. App. 2008) (School districts may not deny special education instruction and services to students in nonpublic schools.).

- Request medical documentation verifying the existence of a condition and its severity. This can be an important step. The school should not attempt to determine whether a student has a particular condition or what that condition may mean for that student.
  - When an accommodation request is received, staff should respond by requesting more information from the parents regarding the student’s medical condition. The school should request that parents provide them with consent for medical records and provide them any other relevant information.
  - The medical documentation, at a minimum, should identify the condition, explain how it substantially limits a major life activity, and identify the length or limitations for the condition. The school may also want to ask the medical provider for an appropriate accommodation or if a suggested accommodation would be effective.
- Do not engage in any type of screening or testing of the student without the written permission of the student’s parents.

Once the school has obtained information from other sources, it will be in a better position to determine whether the student has a disability, and also whether there is a need for some accommodation.

#### B. Evaluate information about the student’s condition

After the school obtains information about the student’s condition, the school will need to evaluate that information. The goal of this process is to establish a baseline to determine what the student’s condition(s) and need(s) are.

If the school is provided with information from a health professional regarding the condition and its nature and severity, the school should then move on to the next step of identifying potential accommodations.

Similarly, if the school receives information regarding testing or evaluations that have been done by professionals or the local school district, the school may again be able to move to the next step of identifying potential accommodations.

But if the school receives no information supporting the claim that the student has a disability, the school will need to proceed more carefully. For instance, the school probably cannot rely simply on a statement from a parent, student, or even a teacher that a student needs more time to finish a test or some other accommodation.

### C. Obtain input on possible accommodations

If a student has a disability, a school—even a private school—has an obligation to at least consider some possible accommodations for that student. In making such a consideration it is important, again, to obtain input from a variety of sources to identify possible accommodations.

- Involve the student (if age appropriate), teachers, parents, counselors, public school, 504 coordinator, and IEP team (if applicable) to determine if an accommodation is needed and to determine what accommodation is appropriate.
- With regard to the proposed accommodations, ask what benefit the accommodation would provide, whether the accommodation could be provided effectively, and what benefit the student would be denied if the accommodation was not provided.
- Do not say yes or no to any particular accommodation until all facts are obtained and considered.
- Consider requesting medical documentation verifying the appropriateness of proposed accommodations.
- Depending on the circumstances, general accommodations can include modifications to:
  - Communications between parents, students, and teachers (e.g., developing a daily or weekly journal, and scheduling and holding meetings)
  - Presentation of materials (e.g., repeating directions, reading directions aloud, reading and writing directions, highlighted textbooks, extra books for home use, enlarged print, or visual aids)
  - Teacher responses to a student (e.g., marking answers in books, using reference aids, positive reinforcements, behavior intervention plans)
  - Student's setting (e.g., providing a separate study carrel, special lighting, providing a separate room during a test, giving assigned seating to minimize disruptions or maintain focus, and allowing the student additional opportunity for movement)

- Other facilities (e.g., adjusting transportation and parking arrangements and ensuring accessibility to the cafeteria or media rooms)
- Time and scheduling of work and activities (e.g., providing extended time to get to and from classes or activities, providing more frequent breaks, allowing more time to take tests or complete assignments, early dismissal for appointments, or allowing additional absences for health reasons)
- In general, curriculum should not be modified.
- Generally, accommodations cannot be made solely for the purpose of standardized testing. An Action Plan or Study Plan is not sufficient on its own to make an accommodation for purposes of standardized testing. Standardized tests, such as the ACT, generally require an IEP or a 504 plan that specifically states the need for accommodations and indicates that the accommodations are made for other assessment situations. They also frequently require supporting documentation from a qualified professional, such as a qualified physician or psychologist.

#### D. Evaluate and choose the accommodation

After obtaining information about accommodations, the school should next evaluate the options. When reaching this decision, it is crucial that the school carefully consider its obligations. Schools should remember that they do not need to blindly comply with all requests for accommodations. At the same time, schools should not automatically conclude that no accommodation is required.

#### MHRA Requirements:

The MHRA prohibits schools discriminating against persons with disabilities. Minn. Stat. § 363A.13, subd. 1.

Schools cannot discriminate against disabled students through exclusion, expulsion, or admission. Minn. Stat. § 363A.13, subd. 2.

In addition, schools, including private schools, must ensure program access for students with disabilities:

- Under the MHRA, program access includes: providing taped texts, interpreters or other methods of making orally delivered materials available, readers in libraries, adapted classroom equipment, and similar auxiliary aids or services.

- Program access, under the MHRA, does not include: providing attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

#### Section 504 requirements:

Section 504 imposes different requirements on public and private schools. Generally speaking, a private school may not face the same kind of requirements that its public school counterparts do. But Section 504 still imposes significant requirements upon private schools, by requiring that they make adjustments to programs to ensure access by disabled students.

In particular, Section 504 requires private schools (including parish-based schools), which receive federal funding, to do the following:

- Enroll students with disabilities if the student is otherwise qualified to participate in the program, with or without “minor adjustments.” 34 C.F.R. § 104.39. In other words, if a disabled student meets the private school’s program criteria, the school must enroll the student, or if the disabled student could meet the criteria with a minor adjustment, the private school must make that adjustment and enroll the student.
- Provide the least restrictive environment and comparable facilities to disabled students. 34 C.F.R. § 104.34.
- Provide equal opportunity for participation in nonacademic and extracurricular activities. 34 C.F.R. § 104.37.
- If the private school operates a preschool education, day care, or adult education, the school cannot, on the basis of a handicap, exclude qualified handicapped persons. The private school must also consider the needs of such persons when determining the aid, benefits, or services that will be provided. 34 C.F.R. § 104.38.
- If the private school offers special education programs, it must satisfy obligations relating to evaluation, placement, and procedural safeguards that are similar to those for public schools. 34. C.F.R. § 104.39(c); 34. C.F.R. § 104.35; 34 C.F.R. § 104.36.

The requested or possible accommodations must be evaluated against this legal backdrop. In addition, in evaluating and choosing an accommodation, the school should also do the following:

- Remember that the chosen accommodation(s) must relate to the purported disability.
- Consider what accommodations the school has provided in the past, and what it will be required to provide in the future.
- Pay particularly close attention to the requirements of Section 504, which requires private schools to :
  - make minor adjustments to ensure access to disabled students;
  - provide least restrictive environments and comparable facilities; and
  - provide equal opportunity for participation in nonacademic and extracurricular activities.
- Also pay close attention to the requirements of the MHRA, which provides *some* examples of what program access does and does not include.
- Evaluate accommodations for the normal school day, but also consider adjustments that might be needed for other circumstances, such as field trips, extracurricular activities, etc.
- When evaluating requests, consider the cost (financial and non-financial) to the school against the potential benefit to the student. Keep in mind that if a school chooses not to provide a requested accommodation, it must be prepared to explain, as a practical matter, the basis for its decision.
  - All such inquiries are fact specific. Some factors that might be considered including the overall size of the school with respect to the number of employees, number and type of facilities, and size of budget, and the nature and cost of the accommodation(s) needed.
  - When faced with limited resources, it can be tempting to conclude that almost any modification or accommodation constitutes an undue hardship on a school. It can be difficult to establish, however, that a student's request for a modification or accommodation is in fact unreasonable or constitutes an undue hardship. Courts will likely weigh the burden to the school against the potential benefit to the student. At least as a practical matter, a school bears the burden of demonstrating that a request was an undue hardship. All such inquiries are necessarily

fact specific. Some factors that might be considered include the overall size of the school with respect to the number of employees, number and type of facilities, and size of budget, and the nature and cost of the accommodation needed.

- Carefully choose the accommodation.
  - A school that fails to implement an accommodation that it has agreed to provide can face liability.
  - If you provide the accommodation to one student, you may be expected to provide a similar accommodation in the future.
  - Be prepared to explain why what the school has chosen is reasonable and effective.
- If no accommodation is legally required or requested, proceed carefully. If a school treats a student differently without justification, it could be accused of discrimination or of regarding the student as having a disability.
  - Failure to provide accommodations or adjustments in accordance with Section 504 can result in substantial damage awards, including attorneys' fees. A student who prevails against a school in a Section 504 case can also be entitled to reinstatement.

#### E. Implement the accommodation

- Do not purport to write an IEP plan.
  - The IEP plan is an outline of services that students receive from a public school. It is a legal document that grants certain rights to the student and the student's parents under the Individuals with Disabilities Education Act (IDEA).
- Do not purport to write a Section 504 Plan, especially if it unclear as to whether the school receives federal funding. Such plans create legal obligations for the school and denote certain entitlements for the student. A 504 Plan carries with it some legal implications for students and parents that a Catholic school may not be able to grant. Like an IEP, a 504 Plan may be written by public school representatives to state what services a public school will provide for a student. Section 504 and 504 Plans extend protections to individuals with disabilities in most aspects of their lives.

- While the private school should not draft an IEP or 504 Plan, it should still document what it is able to do to make accommodations for the student in accordance with applicable law. The school can create a written plan called an Action Plan or Study Plan to identify what services or accommodations the private school will be able to provide. This will be a plan developed for use by the private school and the student, and will not necessarily be implemented by other schools. Keep in mind that the public school has no responsibility for implementing such a plan. It does create contractual implications for the private school, but it will not grant legal rights to the student or parents in the same way that an IEP or Section 504 Plan does.
- Communicate the school's decision to the parents and to school staff.
- Put the accommodation in place.
- Continue to be proactive to address situations where an accommodation might be needed on a field trip or when there is a substitute teacher.
- Proceed carefully when disciplining a student who has disabilities, particularly if the offending behavior is related to or the result of the student's disability. In addition to following the suggestions above (particularly those relating to documenting and planning), it will be helpful to keep a written log of all disciplinary issues relating to the student. Such a log should indicate the date of the incident, describe the offending behavior, identify any other participants or victims, explain the immediate steps that were taken to correct the behavior, and identify any communications with the student or parents. Be aware that federal and state law both limit a school's ability to expel disabled students. For example, the Minnesota Pupil Fair Dismissal Act (though applicable to public schools) contains specific restrictions on the exclusion and expulsion of disabled students. Under that law, if a child with a disability is suspended for more than 5 consecutive school days or 10 cumulative school days in the same year, the child's IEP team must meet to evaluate the child's need for services. Minn. Stat. § 121A.43. The same law also requires schools to take certain procedural steps before expelling or excluding a student. Minn. Stat. § 121A.47. Finally, you should be aware that if a student is placed at the private school by the public school district, any disciplinary action taken by the private school will likely need to comply with Section 504 (and if applicable, IDEA).

**Special Note on Confidentiality:** Teachers and administrators may be asked questions about students by the parents of other students. It is critical that the school refrain from providing information about a student to another family. This issue most often arises in the context of a student who may have some behavioral issues.

If a parent seeks information relating to a student other than their own child, the school should respond by stating that it cannot share information regarding another student.

F. Evaluate the effectiveness of the accommodation

- This is an ongoing process. An accommodation which is ineffective can be as problematic as no accommodation at all.
- Be prepared to repeat these steps as needed, including when new information is received about the student's disability.

V. CONCLUSION

Catholic schools likely have obligations to provide certain accommodations to disabled students under state and federal laws.

It is important that schools carefully address requests for accommodations or other concerns relating to students with disabilities. Schools need to obtain information and establish a baseline to determine whether the student is disabled and what accommodations are needed, and then schools need to carefully assess and implement such accommodations where appropriate. Failing to do so can create substantial liability for disability discrimination claims, which can include awards of costs and attorney's fees.