

Massachusetts District Violates 504 by Not Meeting Student's Assistive Technology (AT) Needs While AT Device is Being Repaired

A Massachusetts School District violated a student's 504 Plan by not providing training for staff on how to use an FM sound amplification system and not providing a back-up device for a student with a hearing impairment while the original device was being repaired. In *Bellingham (MA) Public Schools, 59 IDLER 142 (OCR 2012)* the school district developed a 504 Plan for a student with a hearing impairment. The initial plan was developed during his fourth grade year in elementary school and included: preferential seating; oral directions and instruction should take place so that the speaker is facing the student; gain the student's visual attention before providing instruction or directions; provide a specified area in which the student can work if requested/needed; check to see that the student understands directions; clarify if necessary; and the use of an [FM system for amplification](#). The school guidance counselor was responsible for communicating the 504 plan to the student's teachers and she did so by placing a copy in their mail boxes. She did not provide the teachers with any instructions on how to use the FM system. The student used the system through his fourth grade year, but in fifth grade, during the student's first year of middle school, problems began.

The middle school teachers did not know how to use the device or how to "sync" it. The principal arranged for the speech language pathologist to teach the principal, the school nurse, and the guidance counselor how to synchronize the system. However, the FM device only worked intermittently and eventually was sent to be repaired. The student went months without the FM device. During that time no one checked with the student to determine how not having the device was affecting him. Moreover, no one made any effort to compensate for the unavailable system.

As a result, the student's mother noted that he often came home crying because he had missed the teacher's instructions, particularly during the confusion at the end of a school day. The mother called his friends to check on his assignments. Frustrated, she filed a complaint with the Office for Civil Rights (OCR) alleging a violation of 504.

The school district explained to OCR, that since the student had continued to maintain "A" and "B" grades while the FM device was unavailable, they felt he was not affected by the district's failure to follow his 504 Plan. The Office for Civil Rights, however, agreed with the student's mother that his maintenance of good grades was due to his own diligence. Thus, the OCR determined the district's failure to implement the 504 Plan and failure to implement mitigating measures denied the student a free appropriate public education and violated 504. To resolve the complaint the school district agreed to:

- Review the student's 504 Plan at the beginning of the following school year;
- Clearly designate what accommodations are always supposed to be provided and what accommodations are supposed to be provided in the event the FM system is not working;

- Ensure that the plan includes a provision for checking in with the student about the provision of services if the FM system is not working and provide training on the FM system to all of the student's sixth grade teachers.

The lesson for school districts from this case is to develop a back-up plan for what to do if the device breaks. School districts and 504 planning teams should anticipate that AT devices will break and determine, ahead of time, where the device can be repaired and what to do in the interim. Good communication between parents and school staff can help avoid and/or resolve disputes. So, as part of the 504 Plan, involve parents in devising the back-up plan. Finally, school districts should not rely solely on the adequacy of a student's grades in determining eligibility for services or the impact on the student when required services are not provided.