

## Appendix N: Sample Letters to Schools

### **Sample number 1: Absenteeism**

Superintendent of Schools  
Town of Town  
Main Street  
Town, USA

RE: *Student*

Dear Dr. C:

I have been retained to represent MOM on behalf of her minor daughter, STUDENT, a student at Town High School ("the school"). The Family has been notified by letter dated June 10, 2004 that the school will not credit her for any of her courses during the 2003-2004 school year because she was absent for fifty-two days during the year. Because this runs contrary to the Town Public Schools ("TOWN HS") own policies and procedures, as well as state and federal law, I am asking that you review and reverse the school's decision.

#### *Factual Background*

STUDENT, 16 years of age, suffers from Crohn's disease, a form of inflammatory bowel disease, which is a chronic illness involving inflammation of the lining of the intestines. The disease can cause diarrhea and pain, and there are a number of secondary effects, such as depression and dehydration. In addition, STUDENT is in special education for issues unrelated to her Crohn's disease, and has been treated on both an inpatient and outpatient basis for depression. STUDENT is on numerous medications for her Crohn's disease, including prednisone, Pentasa, Imuran, and Remicade. These drugs have side effects, including a direct effect on the immune system, making the patient more susceptible to catching illnesses.

During the approximately two-month absence from early March to early May, STUDENT suffered debilitating diarrhea, with as many as 8-15 occurrences per day. She was in extreme pain, and was nauseated much of the time. Although she was not hospitalized, as you can tell from the litany of medications she takes, she has been treated quite aggressively, and the flare that incapacitated her from early March to early May has subsided. At her sickest, STUDENT was on 40 mgs. of prednisone a day. The side effects of prednisone include increased appetite, sleeplessness, aggression, and the "mooning" that I am sure her teachers have noticed in her face.

The Family has done all they could to keep the school informed of STUDENT's condition. On each day STUDENT was absent, a call was placed to the school. In

addition, MOM contacted the school guidance counselor, the resource room teacher and the school nurse on a regular basis, providing health updates and/or asking questions about missed work. For a time beginning in mid-April, the school offered tutoring, which always was accepted except during one week when STUDENT was too ill even to be tutored. Once the school was able to identify a tutor who was both available and reliable, STUDENT accepted tutoring, even when it meant that she went from school to the town library for tutoring sessions that lasted until approximately 9 p.m., while also being required to keep up with her ongoing homework assignments. STUDENT has taken every make-up exam and has done every bit of make-up work that she has been offered. Indeed, she has been required to make up missed work at an accelerated rate, at fewer than one day for each absence.

The Family have submitted numerous reports from treating physicians. STUDENT was diagnosed with Crohn's disease in 7<sup>th</sup> grade, so the school and the TOWN HS have known of her diagnosis for a considerable period of time. In addition to keeping the school nurse updated on STUDENT's medications and condition, numerous medical notes have been provided to the school. Her treating gastroenterologist, Dr. S, submitted a letter indicating that STUDENT was having a flare of her Crohn's disease which began on the date on which her long absence began. Dr. S indicated that STUDENT's symptoms were frequent diarrhea and severe cramping. Dr. S again wrote indicating that STUDENT remained in his care, and that her illness required additional absences.

The Family has had only one meeting with a Planning and Placement Team ("PPT"), which was a regular annual review that was not conducted until very late in the school year. At that conference, they were informed that no further tutoring would be offered beyond the end of that week, with no explanation. It was the MOM's impression that, at that point, the school had determined that STUDENT had caught up with most of her work. STUDENT's English teacher asked STUDENT if she was still being tutored, and seemed surprised to learn that the tutoring had been discontinued by the school.

As you know, the students are required to take 6 courses per semester, 2 of which are half-year courses, and four of which are full-year courses. In the first semester, STUDENT's two half-year courses were Health and World Cultures. Although initially the school indicated that it would not count these two courses, by Credit Loss Appeal Outcome, STUDENT's credit was restored due to the submission of sufficient documentation to support extenuating circumstances. The statement in Principal's letter that "STUDENT will lose credit in all of her classes for this school year" ignores the fact that credit already was restored for these two courses.

A letter from Coordinator of Student Affairs, indicates a preliminary decision to deny credit for Biology, Design, Geometry, Health, Civics, "Lit. Forms," and "Human Dev." This, too, appears to signify a reversal of the February decision, at least with respect to the Health course. There simply is no basis for denying credit for the two first semester half-year courses as to which the school already granted an appeal.

During the second semester, STUDENT's half-year courses were Civics and Interior Design. STUDENT reports that she completed all of the assigned work in the Interior Design course except one paper, took all of her exams, and has a passing grade in the course. As to the Civics class, STUDENT attempted to submit make-up work to the teacher, who refused to consider this work on the ground that it was submitted late. STUDENT also is being penalized for missing "notebook checks" on days when she was absent due to illness. Again, though, STUDENT believes that she passed both the final exam last Friday, and the course as a whole.

As to the four year-long courses, the Family understand that it may be impossible to make up missed biology labs. However, STUDENT was tutored in Geometry and passed in each of the first 3 quarters of the year. She believes that she completed all of the work, and that she passed the course. STUDENT did all of the work assigned in her English class, and received a final grade of 81. STUDENT is uncertain about the status of her Human Development course, largely because the teacher was unable to advise STUDENT clearly of what work needed to be made up. In addition, although STUDENT requested permission to take one of the exams in that course in the Resource Room, which is an option available to her as a special ed student, the Human Development teacher never provided the test to the Resources Room teacher.

In seventh grade, when STUDENT was diagnosed, after two hospitalizations, and despite 33 absences, STUDENT passed the year. The two-month flare that she suffered this year is not atypical, although STUDENT's prospects are greatly enhanced by the fact that the medications were able to force the disease back into remission in a relatively short period of time. Due to the relapsing and remitting nature of a chronic illness, there are no guarantees. However, remissions can last many years, and there is no reason to believe that STUDENT's condition will not remain improved for a significant period of time.

Finally, there were a few absences for reasons other than Crohn's disease. STUDENT suffered from a migraine; and had food poisoning (with the rest of her family). According to the school's records, the total number of absences was fifty-two.

Despite the obstacles she faced, STUDENT scored well on her Mastery Test ("MT"), with a low performance only in the writing category, which would be expected based on STUDENT's learning disabilities. Her scores in both reading and math are above the goal established by the State. This is not a student who intentionally avoids learning; this is a student who is faced with a number of challenges, including learning disabilities, a long-term chronic illness, and the side effects of the medications she is required to take even to maintain a remission. There simply is no evidence whatsoever of malingering.

### *Town School Policy*

Perhaps the most surprising thing I found while researching the Family's situation are the policies of the TOWN HS. For example, the policy on absences permits absences for personal illness. Policy provides as follows: "In cases where extended absence is anticipated for acceptable reasons (e.g., lengthy illness), schools made [sic] arrangements for appropriate instruction at a site other than the school itself (e.g., home or hospital) upon explanatory notification and request from parents or student(s) of majority age." The Family certainly made this request. No "instruction at a site other than the school itself" was provided other than tutoring, which was discontinued without explanation.

Policy number 5124 requires the school to have frequent contact with parents, including "parent-teacher conferences, letters and informal notes, telephone calls to parents, and school visitation." Progress reports are required no later than the mid-point of each marking period, and more often if the student is failing. The Family received only mid-point progress reports, with most subjects marked ungraded or incomplete. MOM received only an occasional telephone call from the school, and most of those calls were for the purpose of asking for additional medical documentation to explain her absences.

Most surprising, though, is policy number 5141(b)(1), which applies to students with long-term chronic disease. That policy provides, in pertinent part, as follows:

The Town Board of Education recognizes that children afflicted with a long-term chronic disease have a right to receive an education. To accommodate the interests of students with long-term chronic diseases and the interests of parents, other students and employees, the Board directs the administration to establish regulations which ensure that:

Any student with a long-term chronic disease receives a public education in accord with the requirements of current law.

Any student with a long-term chronic disease will have his/her right to privacy preserved with only specified staff or government official, as required by law, altered to the student's health condition.

Specific information and training will be provided to all personnel involved in the education of students with long-term chronic disease.

An identified case of a long-term chronic disease will be reported by the medical advisor or designee to government officials as required by law.

TOWN HS Policy number 5141(b)(1).

Regulations concerning students with a long-term chronic disease are found in TOWN HS Policy number 5141(c)(1). These regulations require that students with a

long-term chronic disease be provided with an alternative education program. A Long-Term Chronic Disease Programming Team is required to convene within ten school days of learning of the student's condition. The Team, which shall include the parents, is then charged with the task of devising a program for the student. The regulation also requires that the student be referred to a PPT, which then would have primary responsibility for planning an education program for the student.

Finally, the Parent/Student Handbook provides that "[s]tudents not in school or class for a legitimate school reason . . . will not be charged with absences." "Students will be allowed to make up any work missed due to an absence."

### *III. State and Federal Law*

As I am sure you are aware, federal law protects students with disabilities. The Individuals With Disabilities Education Act, 20 U.S.C. § 4000 *et seq.* is the primary source of federal law relating to students with disabilities, although both Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, also provide protection.<sup>111</sup> In addition, State law provides similar requirements implementing the federal law, and ensuring that students with disabilities have their needs met.

#### *Federal Law and Regulations*

The Education of Individuals With Disabilities Education Act ("the Act") was enacted to improve "educational results for children with disabilities . . ." 20 U.S.C. § 1400(c)(1). The Act requires that any State that receives federal funding must ensure that "[s] free appropriate public education is available to all children with disabilities . . ." 20 U.S.C. § 1412 (a)(1)(A). The State must ensure that children with disabilities, "regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated, and a practical method is developed and implemented to determine which children with disabilities are currently receiving special education and related services." 20 U.S.C. § 1412 (a)(3)(A). Each student with a disability must have an individualized education program. 20 U.S.C. § 1412 (a)(4).

Although STUDENT has a learning disability and is enrolled in special education, the definition of "disability" under the Act includes "other health impairments." 20 U.S.C. § 1401 (3). Since the school itself has determined that STUDENT has an "other health impairment[ ]" which interfered with her ability to complete the school year due to absences, the school cannot now claim that STUDENT's Crohn's disease is not a disability as to which special education and "related services" are necessary.

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<sup>111</sup> Both Section 504 of the Rehabilitation Act and the ADA protect students from disability discrimination. Since most school districts receive federal funding, they are covered by both Section 504, which applies to a school that receives federal funds, and Title II of the ADA applies to public entities regardless of whether they receive federal funds.



Section 1414 of the Act requires schools to conduct both evaluations and reevaluations. 20 U.S.C. § 1414(a)(2). The law details the conduct of the evaluation, and charges local educational agencies with following those requirements, including the formulation of an individualized education program ("IEP"). 20 U.S.C. § 1414 (d). None of the requirements of this Act were complied with. Indeed, even if one considered only STUDENT's learning disabilities, an IEP must be reviewed no less than annually. 20 U.S.C. § 1414 (d)(4). MOM receives the IEP goals, but has not been involved in planning that includes accommodations for STUDENT's Crohn's disease.

The detailed regulations promulgated pursuant to the Act further reinforce the requirement of individualized plans to address individualized needs. 34 C.F.R. § 104.33. The regulations also require evaluations and reevaluations of students who are receiving special ed or related services. 34 C.F.R. § 104.35. There must be procedures in place "that includes [sic] notice, an opportunity for the parent or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure." 34 C.F.R. § 104.36.

According to the U.S. Department of Education's Office of Civil Rights, services required by the Act include "modifications to the regular education program including adjustments in test taking procedures and *adjustments to rules regarding absences when a student's absences are due to a disability.*" <<http://www.ed.gov/print/about/offices/list/oct/qa-disability.html>> (retrieved June 20, 2004) (emphasis added).

### *B. State Law and Regulations*

State law requires "special education," which includes "instruction conducted . . . in the home . . . ." Stat. § 1234. There is no question that STUDENT qualifies as a "child requiring special education" based on her learning disabilities. However, by incorporating by reference the provisions of the federal Act into the definition of that phrase, the state law makes clear that a "child requiring special education" includes a child with "other health impairments" pursuant to 20 U.S.C. § 1401(3). Stat. § 1010 provides for procedures to determine whether a child is in need of special education.

In addition, Stat. § 10-2468 requires the school medical advisor to promptly examine any students referred to the medical advisor by the school nurse, principal, or superintendent. The medical advisor is then expected to determine "how the pupil should be cared for and what provisions, if any, should be made at the school for the care and welfare of such pupil."

Agencies Reg. § 10-20-30 provides that Boards of Education must provide homebound and hospitalized instruction when recommended by the PPT. This homebound instruction must be provided as set forth in the student's individualized education program. As the regulations make clear, even in the case of a student who is not in special education, homebound instruction should maintain the "continuity of the child's regular program."

#### IV. Analysis and Conclusion

In his June 10, 2004 letter, Principal indicates that, despite the medical evidence, "I find it difficult to accept that her illnesses have warranted these many absences." He cites a week-end Girl Scout outing, without regard for the possibility that the outing was too much of a strain on STUDENT's system, triggering prolongation of her flare. His only other example is a biology field trip that STUDENT attended on June 3 – a full month after STUDENT's acute flare had been resolved, and the first day she was able to attend school after a brief illness unrelated to her Crohn's disease. Rather than crediting STUDENT for making the effort to attend a field trip, Principal uses STUDENT's attendance as an excuse for disregarding the bases for her absences.

It is precisely this kind of uninformed, discriminatory pretext against which the laws cited above are designed to protect. Federal and state laws require that students with disabilities be given equal access to public education. The only in-home education of any kind that was provided was one day, when the tutor was willing to come to the home. Despite the fact that the TOWN HS and the school have known of STUDENT's long-term chronic medical condition for years, they did not formulate a plan to assist STUDENT to complete assignments and exams. Any make-up work and exams that were offered, STUDENT completed. The fact that the TOWN HS and the school completely dropped the ball in STUDENT's case is not a sufficient basis for holding her back for a full year.

There is no question here that the school did not adhere to the TOWN HS policies. The school never convened a Long Term Chronic Disease Programming Team or complied with any of the TOWN HS policies relating to students with long-term chronic diseases. No PPT was held back in February, after a two-week absence. Although the school granted the appeal and counted the two first semester half-year courses, and although the Family had provided medical documentation both in furtherance of the appeal as well as on an ongoing basis throughout the school year, no PPT was conducted. No homebound instruction was provided as required by Agencies Reg. § 101010. The only written evaluation performed by the school and provided to the Family is dated [a long time ago]. Despite a willingness to continue tutoring, tutoring was discontinued without explanation.

STUDENT suffers from a chronic disease which disabled her from early March to early May. Pursuant to state and federal law, as well as TOWN HS and school policy, provisions should have been made for make-ups, in-home instruction, tutoring, and any other actions recommended by a Long Term Chronic Disease Programming Team and/or a PPT after a full evaluation of STUDENT's condition, with the input of STUDENT's parents. None of this happened. To give STUDENT no credit whatsoever for the entire school year, even though she passed the majority of her courses and completed every make-up test and assignment she was given, is arbitrary and capricious, contrary to the TOWN HS's policies, and discriminatory under state and federal law.

It is now the task of the school and the TOWN HS to do the work that should have been done all along. First semester half-year courses as to which absences already were waived and credit already was given must remain credited. As to all of the other courses, STUDENT's grades and status must be determined. If she has a passing grade, the course should be counted. If her work was incomplete, she should be permitted to make it up during the summer, during time off from her summer job as a junior counselor at a camp. If there is work, such as biology labs, that cannot be made up during the summer months, that one course should be re-taken without penalizing STUDENT by not counting an entire year of school, separating her from her friends and class mates, and postponing her graduation by a full year. STUDENT is a motivated young woman, willing to do whatever it takes to ensure that she does not lose the entire year. In light of the school's departures from state, federal, local, and TOWN HS laws, regulations and policies, the school should work cooperatively with the Family to formulate a plan that should have been in place since STUDENT's first semester absences. This is the very least that the law requires.

I would be pleased to discuss this matter with you further at your convenience.  
Thank you.

Sincerely,

Patient or Attorney

Cc: Chairperson, Board of Education  
Principal, High School

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### **Sample Number 2: Section 504 Plan**

Mr. In Charge  
Coordinator of Student Services  
Office of Student Services  
Any Town, USA

RE: *Student*

Dear Mr. In Charge:

I run an advocacy organization for patients with chronic diseases. I am writing at the request of MOM for her daughter, STUDENT. Although I am a lawyer, my organization is limited to non-litigative efforts at resolving problems facing patients, so you can be assured that my purpose here is not to threaten litigation. My sole focus is to try to assist you and this family to find a solution that suits you both.



## STUDENT's Health

As you know, STUDENT is in second grade and has Crohn's disease, a form of Inflammatory Bowel Disease ("IBD"). She has missed quite a few days of school. She is on a number of medications, including an immuno-suppressant which requires that special attention be paid to STUDENT; if she gets a cold, it can mean pneumonia when for other children, a cold is just a cold. One of the treatments she is on is called Remicade, which not only increasingly hampers her immune system, but since it is administered intravenously, it requires at least one day off for the infusion. Patients often experience flu-like symptoms after an infusion, which could necessitate at least one additional day. STUDENT's doctors are still working on the frequency of infusions that will help her.

As you may already know, Crohn's disease is, to put it simply, inflammation of the lining of the digestive track. Crohn's disease is one of two main forms of IBD, the other being ulcerative colitis. There are two very substantial differences between these two diseases; ulcerative colitis can be "cured" by removal of the colon, but Crohn's disease cannot be cured by surgery (or anything else). In addition, although ulcerative colitis is confined to the colon, Crohn's disease can affect the entire digestive track, from the mouth on down. To use myself as an example, my disease affects my stomach, duodenum, small intestine, and colon.

Because Crohn's disease is an autoimmune disease like lupus or multiple sclerosis, it is almost impossible to predict the course of a particular patient's disease. The medical community is learning more every day, but it has not yet reached a full understanding of the immune system, including but not limited to understanding why it attacks the body. Thus, the causes of Crohn's disease are not known. One gene has been identified as a marker, but the biomedical research is ongoing. There appears to be some link in families (for example, I have a first cousin with Crohn's disease), but the cause remains elusive.

As with many chronic illnesses, Crohn's disease is relapsing and remitting, and the symptoms (and their severity) differ from patient to patient. I know patients with IBD who have been diagnosed for years but haven't required hospitalization and surgery. On the other hand, I know patients who have been near death due to the disease, and IBD patients are far more likely to develop colon cancer. The most typical symptom of IBD is diarrhea. However, the secondary effects of diarrhea – dehydration and malabsorption – can be life-threatening. Patients with active disease must be monitored closely to ensure that they are absorbing their medications, and that they are not malnourished. Other symptoms of Crohn's disease range from nausea and vomiting, to fistulas (kind of like a mole that burrows a path from inside the body to an opening that it creates, most commonly in women from intestine to the vaginal area) and abscesses. Fevers, night sweats, inflammation of joints, rashes, pain and fatigue are common symptoms.

Many Crohn's patients develop other autoimmune diseases. I know quite a few patients with both Crohn's and multiple sclerosis, for example. Other illnesses commonly seen in patients with Crohn's are Sjogren's (dry eyes), celiac's disease (an allergy to grains), c-difficile and other bacterial infections, mouth sores, and difficulty in wound healing. Crohn's patients are at high risk for intestinal obstructions, which can lead to death if untreated. I know a patient who had to have a gastric pacemaker inserted because the gastroparesis that accompanies her Crohn's is so advanced. I know many adults who don't have that luxury, and who, instead, are

collecting benefits from either private disability insurance or Social Security Disability Insurance (SSDI).

In children, there are added problems. First, none of the medications used to treat IBD are FDA approved for children. That means all medicinal treatments are off-label uses of drugs approved for adults. The use of immunosuppressant drugs in children who attend school and other activities out of the home make them highly susceptible to catching whatever contagious diseases they are exposed to. A cold is never just a cold in children with IBD. Children with IBD do not grow at normal rates, and tend to be shorter than average their entire lives. They often also have slower sexual development.

Living with Crohn's disease is terribly difficult for patients whose disease is active on a fairly frequent basis. A flare can last a few days or a few years. The emotional toll of having to live one's life near a bathroom, restrict food intake to when a bathroom is available, and take medications that have significant side effects is devastating. Many patients are on anti-depressants.

I have a 10-year old "penpal" with Crohn's. My young pen-pal tells me that she is the smallest kid in her class, and the boys don't want to be around her. She suffers greatly from what may seem to us adults to be trivial matters, especially in a child as sick as she has been.

In fact, I told her that I was trying to help a 7 year old with Crohn's, and I asked her what bothers her most about her illness. She replied as follows (which I am leaving exactly as it was written, typos and lack of punctuation included):

ok um what bothers me the most is that you can miss alot of school  
kisd ask you where have you been saying are you feeling but having  
the surgey made me feel alot better a I eat alot. if you want to you  
can give me her email address and I will talk to her and tell her what it  
is like to have chron's hope it helps.

One of the problems most often associated with children is compliance with a medication regimen. Schools are not always easy to deal with regarding administration of medication during school hours. For a child whose parents live apart, it is critical to ensure that the medication regimen is not interrupted or changed. If a particular diet is recommended, both parents must ensure that it is followed. In order to ensure that a child complies with his or her doctor's orders, it is important that both parents send the same message with respect to these issues.

I do not know STUDENT, nor have I reviewed her medical records, so I cannot speak to her condition in particular. However, I have been told that she has been treated at the emergency room and hospitalized, suffers high fevers that have to be treated with Tylenol and a cool bath, has had bloody stools, and has eating problems. I also was told that she has been on a number of medications, including the Remicade treatments she now receives intravenously. I understand that she also has problems in school, although I do not know if they are related in any way to the Crohn's, except for the absences from school due to flares of the disease.

What I do know, though, is that the support of her parents and siblings is going to be critical for the rest of her life. There will be times when she cannot go to school, times when she worries whether a boy will ever care about her because she's

sick, times when she cannot work and requires both emotional and financial support from her family, and so on. If she is lucky, her disease will go into remission and stay that way, on only maintenance drugs, for a long time. However, it is impossible to predict what her experience with the disease will be. What is not at all impossible to predict is that she will need both her parents.

We all hope that children with Crohn's will live a full and happy life. Many of them do. However, there are times in the lives of both children and adults in which the disease takes over. Those times are unpredictable, both in terms of when they occur and how long they last. We try to treat kids with IBD as if they were normal as much as possible. However, because of dehydration and weight loss, flares in children can deplete their body's resources quickly, requiring immediate response. Parents, teachers and caregivers never should forget that dehydration and malabsorption can be life threatening

The school is, of course, entitled to doctor's notes regarding absences and accommodations needed. My understanding is that you should have these for STUDENT, but if you do not have the sort of medical certification to which the school is entitled, please let me or MOM know and we will get you what you need.

#### Educational Needs

MOM reports that what STUDENT needs is the following:

- In-home schooling during absences;
- Accommodation of days of Remicade infusions;
- A set of books and curricula to have at home;
- Eating small meals and drinking throughout the day;
- Close proximity to bathroom facilities;
- MOM accompanying on field trips when STUDENT is flaring;
- Some accommodation to the fact that, during a flare, mornings are the worst time (as is the case for all Crohn's patients, including myself);
- Pain, and the ability to leave class to go to the school nurse if pain is bad and persists;
- Some sort of accommodation regarding physical education;
- Additional time to complete assignments and tests;
- Other needs to be determined in the future, based on the unpredictable course of the disease.

MOM informs me that the school has declined to conduct a section 504 meeting in which each of these could be discussed. In addition, she reports that STUDENT is being tested to see if she requires special education of some sort, and that the school will not consider a section 504 plan unless STUDENT does poorly on these tests.

#### Legal Requirements

I am certain that you do not need me to educate you regarding the section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act ("ADA"), or the Individuals with Disabilities Education Act ("IDEA"). I have worked with a number of school districts in similar situations and have found the level of dedication

to be extraordinary. Sometimes, though, I can be of help in tailoring remedies to this particular disease since I am both a patient advocate and a patient myself.

Section 504 protects students against a number of activities, including but not limited to denying credit to a student whose absenteeism is related to a disability; provision of aids, benefits, or services that are not as effective as those provided to others; etc. A student is "disabled" for section 504 if she has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. There is no question that STUDENT is substantially limited in the major life activity of disposing of bodily waste. Thus, she is covered under section 504.

Even in the employment context, the most common accommodations under the ADA are proximity to bathroom facilities, a flexible schedule due to mornings being the worst for patients, and being able to eat during the day in small portions. I have made similar arrangements for many school-aged patients.

Here, it does seem that a section 504 meeting and plan would be a good thing for both the school and the student, so that the student would know what to expect and what not to. I know of many schools that have found ways to accommodate students in these simple ways – scheduling study hall for first period, for example, so that STUDENT does not miss anything if she is late.<sup>112</sup> I recently worked with a school that had difficulty allowing the patient to eat in class. With my help, the school was able to fashion an "eat in class" policy that allowed the patient to follow her doctor's orders without disrupting school schedules.

More to the point would be a free and constructive dialogue between the school and the parents. A section 504 plan would be individualized to meet STUDENT's needs. Whether a child is entitled to a section 504 plan does not depend on whether he or she needs special education. Thus, whatever testing the school district is doing cannot be the basis for a determination of whether STUDENT can get a section 504 plan.

A section 504 plan requires a high degree of participation by both the school and the parents. I think you know that MOM is prepared to do whatever she needs to do in order to ensure that STUDENT's educational and medical needs are met. The school can respond immediately to certain things – sitting her nearest to the bathroom; instructing teachers to let her go to the bathroom very quickly, with or without permission if STUDENT does not have time to ask for permission without incontinence; allowing her to eat and drink during the day; allowing her additional time to complete exams when she spent part of the exam time in the bathroom; making sure she has the assignments and teaching materials needed to complete those assignments when she is absent due to illness, and planning for absences associated with Remicade treatments since these treatments are scheduled in advance, allowing non-emergent accommodation; allowing MOM to accompany the class on field trips; notifying STUDENT's teachers so that they allow her to go not only to the bathroom but to the school nurse in case of pain; and working something out regarding physical education classes. Each of these would seem to be easy enough for the school and very helpful to STUDENT.

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<sup>112</sup> Typically, IBD patients typically have the worst problems in the mornings.

This leaves the issue of in-home instruction. Here, we have the issue that is least predictable – which days STUDENT can attend school and which days she can't other than days when she is scheduled to be absent for Remicade or other reason. This is the kind of issue that must be addressed in a section 504 plan. Although parents will have ideas for ways to tackle this problem, the school also will have ideas, and the point of having a section 504 meeting is to work out a compromise. If I can help in so doing, I am pleased to be of service. I understand that schools need time to make scheduling arrangements. Perhaps teachers can start by communicating homework assignments to MOM.

#### Conclusion

I hope that you are able to see this letter as an offer of help rather than a confrontation. My intent is to provide assistance, not exacerbate an already tense situation. I am more than happy to work with you and STUDENT's parents to fashion an individualized response to STUDENT's health and educational needs. Thank you.

Sincerely,

Jennifer C. Jaff