


**Section 504:**  
Your Top Questions  
Answered  
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Mickes O'Toole, LLC



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**How are Section 504  
and IDEA Different?**



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**IDEA**

IDEA is a funding law that provides that:

- Children with disabilities have available "special education and related services designed to meet their unique needs."
  - At public expense;
  - Meet SEA standards;
  - Pre-school, elementary and secondary school;
  - Provided in conformity with IEP.



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### Section 504

- Section 504 of the Rehabilitation Act of 1973
- (Sept. 26, 1973), codified at 29 U.S.C. § 701 et seq.
  - Regulations at 34 CFR Part 104
  - First U.S. federal civil rights protection for persons with disabilities
  - Non-Discrimination law



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### Section 504

Section 504 of the Rehabilitation Act provides, in pertinent part, that "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)*



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### Section 504

- What are the risks?
- Internal appeal per policy manual
- Office for Civil Rights Complaint
- State or federal disability discrimination lawsuit
  - Missouri Human Rights
  - New Supreme Court decision – Fry v. Napoleon



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**I am In Charge of Section 504 and I am Just Learning, Where Do I Start?**



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**OCR Resource Guide**  
OCR December 2016, *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools:*  
<https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>



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**Who Should Be In Charge of Section 504 at my District?**



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### Clarify Section 504 Procedures

- Identify compliance coordinator:
  - Section 504 requires that school districts appoint a compliance coordinator. 34 CFR 104.7(a)
  - This person is responsible for ensuring compliance with Section 504 for the District and is typically in charge of investigating claims of disability discrimination and harassment.
- Update and familiarize with Board Policies.
- Establish, update and adopt Section 504 procedures and procedural safeguards.
- Publish accurate Notice of Non-Discrimination.



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### Notice of Non-Discrimination

- Publish – on website, central office, handbooks.
- Train – is everyone aware of who compliance officer is and reporting obligations?



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### What Do We Do When a Student Brings in a Prescription for a 504 Plan?



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### Process

- Treat as a referral under Section 504 and start process.
- When to refer: If the student, because of a disability, needs, or is believed to need, special education or modification to regular education. *OCR Guidance 2009.*
- A practice that limits 504 evaluations to situations where parents expressly request them is unlawful.  
*Oxnard Elementary School Dist., 2011*



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### Who Is Part of the Child's Section 504 Team?



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### Placement Procedures

Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) **ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options,** and (4) ensure that the placement decision is made in conformity with § 104.34.

34 C.F.R. § 104.35(c)



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### Placement Team

- The regulations do not explicitly include parents, but “parents are key members of this knowledgeable group.”

*Escondido (CA) Union Elem. Sch. Dist., 109 LRP 24519 (OCR 01/06/09)*



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### Placement Team

- When a student transferred into a new district and the evaluation meeting did not include the parent, the district violated 504.
- By excluding the parent, the team did not have all the information it needed to make a sound decision.
- Thus, the parent/guardian may be a required participant.

*Sequoia (CA) Union High Sch. Dist., 110 LRP 4676 (OCR 07/31/09)*



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### Placement Team

- When a meeting is convened for a student whose medical condition may require the provision of aids or services, a medical professional with adequate and student-specific knowledge of the medical condition should attend the meeting.
- Student with asthma and food allergy; no nurse or doctor attended. Little discussion of medical issues at meeting. School nurse had discussion of medical condition when developing IHP prior to the meeting.

*Charlotte-Mecklenburg (NC) Schs., 54 IDELR 267 (OCR 2009)*



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## A Parent Requested a Section 504 Plan, but their Child's Grades are Fine, What Do I Do?

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## Student with a Disability

- Students who satisfy this definition are entitled to a Free and Appropriate Public Education (FAPE):

A person who has a **physical or mental impairment which substantially limits** one or more of such **person's major life activities**.

29 U.S.C. § 705(20)(B)

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## Impairment Defined

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
- Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.
- Physical or mental impairment:
  - includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech, and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, **dyslexia** and other specific learning disabilities, **Attention Deficit Hyperactivity Disorder**, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

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**Major Life Activities – What Do They Encompass?**

- Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, **eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating,** and working.
- A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.



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**Major Life Activities – What Do They Encompass?**

- ... reaching, lifting, bending, writing, communicating and interacting with others.

*\*reflected in 2016 Final Rule*



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**Substantial Limitation**

- Interpreted Broadly
- Shouldn't demand extensive analysis
- OCR 2015
  - Does OCR endorse a single formula or scale that measures substantial limitation?
    - NO
  - "Determination must be made on a case-by-case basis with respect to each student."



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## Medical Diagnoses & Grades

- OCR – A medical diagnosis, including medication, is neither necessary or controlling in determining disability status.
- A medical diagnosis is simply evidence that the individual has an impairment.
- Grades alone are insufficient to make eligibility determination.

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## Eligibility Determination Practical Guidance

- SPECIFIC TYPES OF IMPAIRMENTS
  - "While there are no per se disabilities under Section 504 and Title II, the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. Thus, for example, a school district should not need or require extensive documentation or analysis to determine that a child with diabetes, epilepsy, bipolar disorder, or autism has a disability under Section 504 and Title II."

*Dear Colleague Letter, (OCR 2012)*

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## What About Students with Allergies?

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## Is a Student with COVID-19 Entitled to a Section 504 Plan?

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## Temporary Impairment/Disability?

- Questions of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

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## In-Person Instruction v. Virtual Instruction

**What should school districts consider if they are phasing in the use of physical facilities and in-person instruction for students with disabilities before others?**

Answer: The Department understands that there may be circumstances where schools decide to prioritize in-person instruction for students with disabilities, in order to provide the services necessary to ensure that those students receive a free appropriate public education (FAPE) under Section 504 of the Rehabilitation Act of 1973 (Section 504). Whether a school district that is phasing in in-person instruction may be required to give priority to a student with a disability, however, will depend on an individualized determination of the student's educational and disability-related needs, and whether providing in-person instruction or services would be a reasonable modification to a reopening policy that is necessary to provide a student a FAPE or otherwise to avoid discrimination on the basis of disability.

*Questions and Answers for K-12 Public Schools In the Current COVID-19 Environment, 120 LRP 29373 (OCR 9/28/20)*

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## What If We Can't Agree with the Parents about What is Needed for the Student in a 504 Plan?

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- Section 504 does not require that all members of the placement team agree to educational decisions. If parents disagree with the placement team decision, they may resolve the dispute through a due process hearing.
  - *Calvert County (MD) Pub. Schs.*, 41 IDELR 139 (OCR 2003)
  - See also *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools* (OCR 2016).

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## Due Process Appeal Procedures

- If parent intends to challenge an action proposed or refused by the District regarding identification, evaluation, programming (provision of FAPE) or placement, they must follow the District's appeal procedures.

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## Dad Is Requesting Two Extra Weeks to Turn in Assignments, What Do We Do?

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## Creating 504 Plans to Meet Student Needs

- Under Section 504, an appropriate education is defined as "the provision of regular or special education and related aids and services that (i) are designed to meet the individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of [the 504 regulations]."

34 C.F.R. § 104.33(b)(1)

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## What Accommodations Should and Should Not Do

- "Section 504 does not require a public school district to provide students with disabilities with potential-maximizing education, only reasonable accommodations that give those students the same access to the benefits of a public education as all other students."

*J.D. v. Pawlet Sch. Dist., (2nd Cir. 2000).*

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**What Accommodations Should and Should Not Do**

*Moody v. New York City Dep't of Educ., (2nd Cir 2013):*

- *District did not violate Section 504 when it denied a parent's request to heat up the food that an 11-year-old boy with diabetes brought in for lunch each day*
- A district does not have to provide every accommodation a parent requests for a student with a disability. Rather, the district only needs to ensure that the student has meaningful access to its programs and services.



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**Drafting the Plan**

- Don't list teacher's names.
- Be specific.
- Treat each student and situation individually.



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**Review & Revise:**

- Teachers will fill out planner each day.
- Student will receive extended time on assignments.
- Student will receive a copy of notes.



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### Implement the Plan!

- Teachers must implement the provisions of 504 plans!  
*OCR Guidance 2009*
- If a modification is no longer appropriate or needed, team should convene to determine whether the plan should be changed.

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### Who Should See a Copy of the 504 Plan?

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### Who Should Receive a Copy?

- Districts may disclose personally identifiable information concerning a student to "school officials" within the institution who have a "legitimate educational interest" in the student. FERPA regulations allow the school to determine which individuals possess such an interest.  
*34 CFR 99.31(a)(1)*
- 504 Distribution Best Practices:**
  - Keep documentation of distribution.
  - Don't forget bus drivers and cafeteria staff.

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## What About Section 504 and Students Learning Remotely?

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- Reconvene or discuss and amend as needed.
- Develop amendment for short-term remote learning.

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## If a Student Needs a Paraprofessional to Attend Basketball Practice with Them, Do We Have to Hire a Paraprofessional?

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### Section 504 Regs

- ADA and Section 504 – may not deny a qualified disabled person the opportunity to participate in or benefit from an aide, benefit or service.
- Issue of accessibility and equal opportunity.
- District "shall provide non-academic and extracurricular services and activities in such a manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities."

34 CFR 104.37



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### OCR: In re Dear Colleague Letter (2013)

- A District must conduct an individualized inquiry to determine whether reasonable modifications or necessary aids and services would provide a student with a disability with an equal opportunity to participate in an extracurricular activity.
- Provision of an equal opportunity "does not mean every student with a disability has the right to be on an athletic team, and it does not mean that school districts must create separate or different activities for students with disabilities."
- Letter provided examples:
  - Light with starter pistol for deaf runner.



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### *Clemons v. Shelby County, 120 LRP 19190 (6<sup>th</sup> Cir. 2020):*

Evidence that coach predetermined whether a student with disability would make tennis teach could make discrimination complaint successful.



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## Do Students with Section 504 Plans Get Additional Protection When it Comes to Discipline?

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### Discipline of 504 Students

- Is not addressed in Section 504 or the federal regulations.
- Addressed solely in informal federal guidance by OCR and/or the courts.
- OCR interpretation based primarily on regulations requiring FAPE and reevaluation prior to a significant change of placement.
- Under OCR policy, any suspension, exclusion, or expulsion exceeding 10 days or any series of shorter suspensions or exclusions that the aggregate totals more than 10 days and creates a pattern of exclusion constitutes a significant change of placement that triggers the reevaluation requirement.

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### Discipline of 504 Students

- Disciplinary significant changes in placement:
  - The permanent exclusion of a student.
  - Exclusion for more than 10 consecutive days.
  - A series of suspensions that are each 10 days or fewer in duration that create a pattern of exclusion.
    - OCR Memorandum Re: *Discipline of Students with Disabilities* (April 1991)
    - See also *Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools* (OCR 2016)

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### Disciplinary Protections

- Students protected under Section 504 receive additional disciplinary protections!
- Notify principal when discipline will exceed 10 days.
- Must conduct manifestation determination!

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### Placement After Suspension

- Following the manifestation determination review:
  - If behavior was related: Generally, a student may not be subjected to a significant change in placement as a disciplinary measure for behavior that is a manifestation of a disability.

*OCR Staff Memorandum, 16 IDELR 491 (OCR 1989); see also Greenville (TX) Indep. Sch. Dist., 113 LRP 27897 (OCR 04/11/13)*

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### Placement After Suspension

- Following the manifestation determination review:
  - If behavior was unrelated: The district may discipline the student as it does the general education population, including suspending the student for more than 10 consecutive school days.\*

*\*If state law mandates the provision of continued services to properly expelled students, then such services must be offered to both students with disabilities and nondisabled students alike.*

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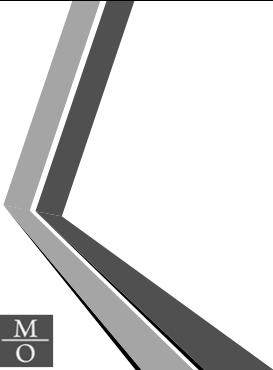
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**Questions?**

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