**Section 504: Improving Current Regulations**

The U.S. Department of Education’s Office for Civil Rights has announced that it intends to propose amendments to its regulations under Section 504 of the Rehabilitation Act of 1973, the landmark disability civil rights law. The Department is seeking suggestions from the public to help identify proposals that will best improve current regulations at 34 C.F.R. pt.104. Interested parties may go to [www.ed.gov/policy/rights/reg/ocr/](http://www.ed.gov/policy/rights/reg/ocr/) to submit suggestions. This document provides resources helpful in preparing suggestions to OCR focused primarily on CFR Part 104 Subpart D – Preschool, Elementary, and Secondary Education.

**Primary Resource documents:**

* **Disability Discrimination – OCR FAQ**<https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/disability.html>
* **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>
* **Obligations Of School Districts Under Section 504 Of The Rehabilitation Act Of 1973 With Updates On The ADA Amendments Act, Ronald M. Hager, National Disability Rights Network, July 2011**<https://www.advocacyinstitute.org/academy/Dec11504/504FactSheetTASC2011.pdf>

**Issues addressed in Q&As, Dear Colleague Letters, Case Resolutions:**

**Covered Entities (who must comply)**

* **Charter schools**Charter school students with disabilities (and those seeking to attend) have the same Section 504 rights as other public school students with disabilities  
  [www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-charter-school.pdf](file:///C:\Users\Diana\Dropbox%20(SPAN)\PC\Downloads\www2.ed.gov\about\offices\list\ocr\docs\dcl-factsheet-201612-504-charter-school.pdf)
* **Juvenile Justice facilities**Juvenile justice residential facilities and any other entities that receive Federal funds from the Departments–either directly or indirectly through another State or local agency–and that provide educational services in such facilities are subject to Federal civil rights laws   
  [www2.ed.gov/about/offices/list/ocr/letters/colleague-residential-facilities-201412.pdf](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-residential-facilities-201412.pdf)

**Identification & Evaluation**

* **Child Find**Data from the Civil Rights Data Collection (CRDC) indicate lack of compliance with Child Find (§104.32)
  + <https://c-c-d.org/fichiers/CCD-Education-TaskForce-Letter-on-504-Recs-12_18.pdf>
  + [www.civilrightsproject.ucla.edu/news/press-releases/2021-press-releases/national-analysis-details-troubling-levels-of-pre-existing-education-inequities-for-students-with-disabilities](http://www.civilrightsproject.ucla.edu/news/press-releases/2021-press-releases/national-analysis-details-troubling-levels-of-pre-existing-education-inequities-for-students-with-disabilities)
* **Parent Consent for initial evaluation**

OCR interprets Section 504 to require informed parental consent for the initial evaluation. Section 504 is silent on whether consent must be in writing. If a parent refuses consent for an initial evaluation and a recipient school district suspects a student has a disability, OCR interprets Section 504 to allow school districts to use due process hearing procedures to seek to override the parents' denial of consent. These interpretations are not explicitly contained I the regulation. OCR “urges” schools to allow for parental participation when considering any change in the student’s Section 504 provision of FAPE, including location of services, but does not require it. See Parent and Educator Resource Guide to Section 504:

[www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf)

**Section 504 Requirements & Protections**

* **Access to Accelerated Programs**The practice of denying, on the basis of disability, a qualified student with a disability the opportunity to participate in an accelerated program violates both Section 504  
  <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20071226.pdf>
* **Access to Electronic Book Readers**<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-ebook-faq-201105.html>
* **Access to Extracurricular Athletics**  
  Clarify students with disabilities to have an equal opportunity for participation in nonacademic and extracurricular services and activities  
  <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201301-504.html>
* **Bullying & Harassment**  
  Bullying of a student on the basis of his or her disability may result in a disability-based harassment violation under Section 504   
  [www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf](file:///C:\Users\Diana\Dropbox%20(SPAN)\PC\Downloads\www2.ed.gov\about\offices\list\ocr\letters\colleague-bullying-201410.pdf)
* **Compensatory Services Under Section 504**<https://www2.ed.gov/about/offices/list/ocr/docs/fape-in-covid-19.pdf>
* **Discipline**Clarify requirements to conduct manifestation determination reviews and also to identify exclusion from school for more than 10 consecutive school days or for a series of short-term removals if the total days are more than 10 school days and there is a “pattern” of exclusion. OCR considers an exclusion from the educational program (for example, an out-of-school suspension) of more than 10 consecutive school days to be a significant change in placement. OCR also considers a series of short-term exclusions (each 10 school days or fewer) from the educational program to be a significant change in placement, if the short-term exclusions total more than 10 school days and create a pattern of removal; this is not explicitly in the regulations. See Parent and Educator Guide to Section 504: <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>   
    
  In Springfield School District #186, 55 IDELR 206 (OCR June 29, 2010), the Office for Civil Rights determined that a school district violated Section 504 when it expelled a student with a 504 Plan without conducting a manifestation determination.
  + <https://disabilitylawco.org/resources/ability-law-blog/remember-504-requires-manifestation-determinations-students-even-though>
  + [www.pacer.org/parent/php/PHP-c286.pdf](http://www.pacer.org/parent/php/PHP-c286.pdf)
  + [www2.ed.gov/about/offices/list/ocr/docs/crdc-exclusionary-school-discipline.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/crdc-exclusionary-school-discipline.pdf)
* **Disclosure Of Disability on Report Cards and Transcripts for Students with Disabilities Attending Public Elementary And Secondary Schools**<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-qa-20081017.html>
* **Online/Remote/Virtual Instruction (§104.34)**Section 504 should not prevent any school from offering educational programs through distance instruction.

[www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf](https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf)

Section 504 applies to a public online school operated statewide by a public school district via contract with a private entity. See *Quillayute Valley (WA) School District*, 49 IDELR 293 (OCR 11/26/07); *see also Elkhart (KS) Unified School District 218*, 51 IDELR 51 (OCR 3/26/08) (Online school operated by school district and available to students across the country required to inform students of the procedures to request accommodations and should be able to provide, at a minimum, modifications to the regular education program including test taking and assignment deadlines).

* **Public Health Emergencies and Students with Disabilities at Elementary and Secondary Schools**School officials have an obligation to avoid discrimination on the basis of disability under Title II and Section 504, while cooperating with public health authorities to ensure that students with disabilities have access to the school’s education program.  
  [www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf)
* **Restraint and Seclusion of Students with Disabilities**Use of restraint and seclusion by school districts may result in discrimination against students with disabilities, thereby violating Section 504
  + [www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf)
  + [www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11195022-a.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11195022-a.pdf)
* **Section 504 Plans**

Schools/districts may incorporate a Section 504 plan into a written document but are not required to do so. See Parent Educator Resource Guide

[www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf)

* **Transition - Legal Rights and Responsibilities of Students with Disabilities as They Transition From High School to Institutions of Postsecondary Education**<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20070316.pdf>  
  <https://www2.ed.gov/about/offices/list/ocr/letters/parent-20070316.pdf>