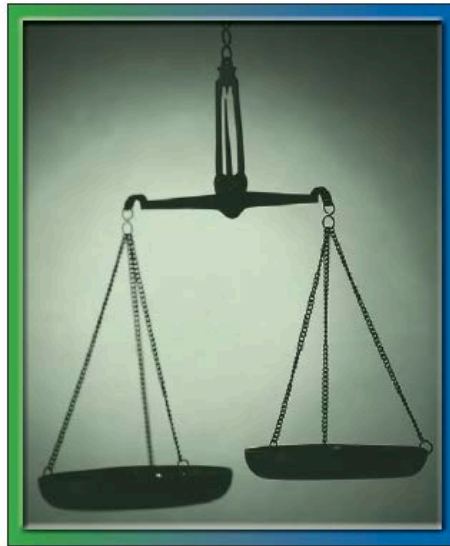


Section 504 of the Rehabilitation Act of 1973



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District Implementation Guide for Section 504



Section 504 of the Rehabilitation Act of 1973

Florida Department of Education
Division of Public Schools
Bureau of Exceptional Education and Student Services
2011



Section 504

Online Introductory Course

Updated Summer 2015.

Student Support Services Project
<http://sss.usf.edu>

Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools



U.S. Department of Education
Office for Civil Rights
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400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Agenda

- ❖ Section 504 Overview
- ❖ Meaning of Disability under §504
- ❖ Implementation of §504
 - ❖ Case Study
- ❖ Special Issues
- ❖ OCR Technical Assistance
- ❖ Court and OCR Findings

Overview of §504

Disability-Related Legislation

- ❖ Section 504 of the Rehabilitation Act of 1973
- ❖ Americans with Disabilities Education Act (ADA) Amendments Act of 2008
- ❖ Florida Educational Equity Act (FEEA) – s. 1000.05, F.S.
- ❖ Individuals with Disabilities Education Act (IDEA)

Section 504 of the Rehabilitation Act of 1973

- ❖ Federal law that prohibits disability discrimination in any program or activity receiving federal financial assistance.
- ❖ Guarantees the right to full participation and access to a free appropriate public education (FAPE).
 - ❖ Provision of regular and special education aids and services designed to meet individual educational needs as adequately as the needs of students without disabilities are met.
- ❖ FAPE is documented on a Section 504 plan identifying the services and accommodations necessary for student to access instruction and participate in extracurricular activities.
- ❖ An IEP developed and implemented in accordance with IDEA is one means of meeting the Section 504 FAPE standard.

§504 of the Rehabilitation Act of 1973



- ❖ Civil rights law
- ❖ Anti-discrimination
- ❖ Equal access
- ❖ FAPE provision – “level the playing field”

Definition of Discrimination in §504

34 CFR §104.4(a)

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

§504 prohibits a school/district from...

- ❖ Excluding a student with a disability from participation in any district program or activity.
- ❖ Denying a student with a disability the benefits of any district program or activity.
- ❖ Subjecting a student with a disability to discrimination solely by reason of her disability.

Office for Civil Rights (OCR)

- ❖ Provides Policy Guidance

- ❖ <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/disability.html>

- ❖ Responsible for Enforcement & Interpretation

- ❖ OCR enforces Section 504 in all educational institutions that receive federal financial assistance.
 - ❖ OCR investigates allegations of discrimination
 - ❖ OCR primarily focuses on **process** – “not the intention of the Department . . . to review . . . educational decisions, so long as the school district complies with the process requirements . . .”

Impact of Americans with Disability Act Amendments Act on §504

- ❖ Definition of disability interpreted to allow for broad coverage
- ❖ Expansion of major life activities, including major bodily functions
- ❖ Impairment does not need to severely or significantly restrict a major life activity.
- ❖ New mitigating measures rule
- ❖ Includes impairments that are episodic or in remission
- ❖ Must reconsider students who district did not find eligible in the past using new legal standards.



Individuals with Disabilities Education Act (IDEA)

- ❖ Federal special education law that establishes FAPE requirements for students with disabilities.
- ❖ Limited to students who meet the eligibility criteria for one of thirteen disability categories and who need special education & related services.
- ❖ Entitlement – funding provided to meet the needs of eligible students.
- ❖ Administered by Department of Education's Office of Special Education Programs (OSEP)

Comparison of §504 & IDEA

§ 504	IDEA
Civil Rights	Entitlement
Broad definition of disability	Narrow definition of disability
FAPE – Written Plan*	FAPE – IEP
Process-oriented	Outcome-oriented
Unfunded	Funded
OCR	OSEP/OSERS

IEP or 504 Plan

- ❖ One way to meet the Section 504 FAPE requirement is by implementing an IEP.
- ❖ If a student is eligible under IDEA, he or she must receive an IEP (*Frequently asked Questions about Section 504*, OCR).
 - ❖ District does not have flexibility to opt for 504 plan when student is eligible under IDEA.
 - ❖ Parent cannot reject an IEP and demand services under § 504.
- ❖ Students with a disability **do not** get both plans!

Meaning of Disability

In §504

Under §504 an individual with a disability
is defined as person who:

- 1) Has a physical or mental impairment that substantially limits one or more major life activities (including major bodily functions).
- 2) Has a record of such an impairment.
- 3) Is regarded as having such an impairment.

(34 CFR 104.3 (j)(1))

Physical or Mental Impairment

- ❖ 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;
- ❖ Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(34 C.F.R. 104.3(j)(2)).

Major Life Activities

Prior to ADAAA

- ❖ Caring for oneself
- ❖ Walking
- ❖ Hearing
- ❖ Speaking
- ❖ Breathing
- ❖ Learning
- ❖ Working
- ❖ Performing manual tasks



Additions per ADAAA

- ❖ Eating
- ❖ Standing
- ❖ Lifting
- ❖ Bending
- ❖ Reading
- ❖ Concentrating
- ❖ Thinking
- ❖ Sleeping

Major Bodily Functions

- ❖ “Major life activity also includes the operation of a major bodily function”.
- ❖ “Major bodily function” includes but is not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- ❖ Consider impact of disability on major bodily functions when determining eligibility.

Substantial Limitation

- ❖ Section 504 does not define “substantial limitation”
 - ❖ Historical interpretation of EEOC – “significantly restricted” as to the condition, manner, or duration under which student can perform a major life activity compared to the average student of the same age/grade in the general population.
- ❖ ADAAA rejects “significantly restricted” definition.
- ❖ Interpreted without regard to the ameliorative effects of mitigating measures.

Mitigating Measures

- ❖ Mitigating measures
 - ❖ Medications
 - ❖ Prosthetic & assistive devices
 - ❖ Learned behavior or adaptive neurological modifications
- ❖ Determination of whether impairment limits a major life activity is made without regard to the ameliorative effects of the mitigating measures.
- ❖ 504 committee must determine impact of impairment in the absence of the mitigating measure.



Episodic and Impairments In Remission

- ❖ Episodic impairments fluctuate in severity (e.g., seasonal allergies, asthma, migraines, cystic fibrosis).
 - ❖ Qualify if condition episodically rises to the level of substantial limitation.
 - ❖ 504 Team should look at data over a period of time so that students are not precluded from eligibility.
- ❖ Impairments in remission
 - ❖ Qualify if student was substantially limited when condition in remission was active.

Is learning the only major life activity that a school must consider when determining a disability under Section 504?

- ❖ **No** – disability does not have to impact learning for 504 eligibility.
- ❖ Must consider how impairment affects any major life activity.
- ❖ Determine what is needed to ensure student's equal opportunity to participate in programs/services.

OCR Q & A: Q7

§504 “Disability”

- ❖ Three “prongs” of eligibility (34 CFR 104.3 (j)(1):
 - ❖ Current physical or mental impairment which substantially limits one or more major life activities;
 - ❖ Record of such an impairment;
 - ❖ Regarded as having such an impairment.
- ❖ The prong under which the student is eligible will determine which protections the student receives.
 - ❖ All three prongs receive the nondiscrimination protections.
 - ❖ Only students with a current impairment are eligible for a plan (FAPE)

Current Impairment

- ❖ Regulations provide a broad definition of “physical or mental impairment”
- ❖ Impairment must substantially limit a major life activity or bodily function
- ❖ Includes impairments that are episodic or in remission
 - ❖ “An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.”
- ❖ Temporary impairment does not qualify unless severity is such that it results in substantial limitation for extended period of time.

Prongs Two and Three

- ❖ Students with “Record of impairment” or who are “Regarded as impaired” are protected from discrimination under 504.
- ❖ Not eligible for services or accommodations that are not available to the general population.
- ❖ Some “Record of impairment” may trigger need to evaluate for current impairment (Prong One).

Who Gets What?

	Discrimination Protection	Disciplinary Safeguards	504 Plan
Disability that substantially limits & requires services	✓	✓	✓
Disability that substantially limits	✓	✓	
Disability – does not substantially limit	✓		
Record of disability	✓		
Regarded as having disability	✓		

Implementation of §504

What Every §504 Coordinator Needs to Know

District Obligations under §504

- ❖ Conduct Child Find.
- ❖ Conduct evaluation & determine if student qualifies under Section 504.
- ❖ Provide FAPE for eligible students in the least restrictive environment (LRE).
- ❖ Provide equal access to non-academic and extracurricular activities.
- ❖ Conduct periodic reevaluations.
- ❖ Establish a system of procedural safeguards.

§504

Child Find & Evaluation

“Child Find” & Evaluation

- ❖ “Child Find” – duty to identify and locate every qualified student with a disability who resides in the district
 - ❖ Not the parent’s responsibility to request an evaluation
 - ❖ District may not require that student complete RTI
- ❖ Inform parents of district’s §504 Procedures.
- ❖ District must conduct an evaluation prior to initial placement.
- ❖ District responsible for conducting a timely evaluation.
- ❖ §504 does not specify circumstances that trigger the obligation to conduct an evaluation.

504 Evaluation “Red Flags”

- ❖ Parent, teacher, or professional initiates a request.
- ❖ Chronic health or medical condition.
- ❖ Excessive absenteeism.
- ❖ Persistent academic, learning, or behavioral problems that have not responded to interventions.
- ❖ Behaviors that result in suspension or expulsion.
- ❖ Ineligibility for or dismissal from ESE may trigger 504 consideration.



§504 Evaluation

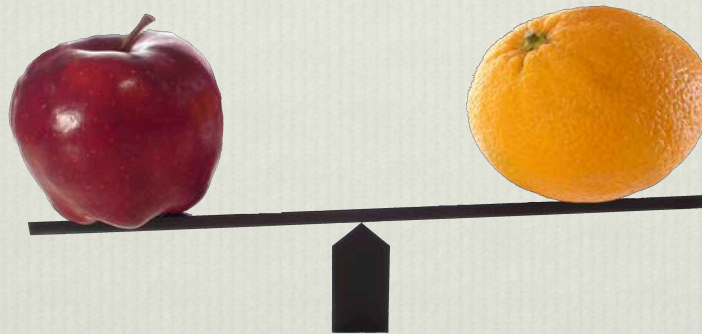
- ❖ NOT a full and individual evaluation as required by IDEA
- ❖ “Evaluation” = gathering of data or information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social/cultural background, and adaptive behavior.
- ❖ If formal testing is conducted, tests must be selected and administered by trained personnel.
- ❖ Parental consent required (per OCR interpretation).

Sources of Evaluation Data

- ❖ Record review
- ❖ Student grades
- ❖ Health information
- ❖ Parent information
- ❖ Disciplinary records
- ❖ Teacher comments
- ❖ Observation
- ❖ Interview
- ❖ Student response to intervention data
- ❖ Test scores
- ❖ Formal assessment measures

Reevaluations

- ❖ §504 requires “periodic” reevaluations
- ❖ Recommend every 3 years
- ❖ Reevaluation vs. Review – How often?



§504

Eligibility and Placement

Eligibility Determination

- ❖ Made by a multidisciplinary team, which consists of a group knowledgeable about the student, the meaning of evaluation data, and the placement options.
- ❖ Based on data
- ❖ Two Determinations
 - ❖ Impairment & Substantial Limitation
 - ❖ Need for a 504 Plan
- ❖ Eligibility and Need for a 504 Plan are separate determinations



Eligibility Questions

- ❖ Does the student have a physical or mental impairment?
- ❖ Does the physical or mental impairment affect one or more major life activities (including major bodily functions)?
- ❖ Does the physical or mental impairment substantially limit a major life activity?
- ❖ Does the student need §504 services in order for his or her educational needs to be met as adequately as non-disabled peers?

Common Errors in Eligibility Decision Making

- ❖ Failing to use data to inform decisions.
- ❖ Not identifying the physical or mental impairment.
- ❖ Ignoring the substantial limitation requirement.
- ❖ Basing eligibility on anticipation of future needs.
- ❖ Basing eligibility solely on a medical diagnosis with no evidence of substantial impairment.



The BIG oops!



Restricting analysis of impact on major life activity to learning.

Eligibility - Case Study

*Section 504 Initial Evaluation and Periodic
Reevaluation (Form 9)*

Developing a Services Plan

504 Plan

Developing and Implementing 504 Plan

- ❖ Include parents when developing Plan.
- ❖ Base services and accommodations on evaluation data.
- ❖ Services and accommodations must address the identified disability to provide equal opportunity/access to activities available to non-disabled peers.
- ❖ Indicate how, where, and by whom services/accommodations will be provided.

504 Plan

- ❖ Include services and accommodations for building, classroom, or transportation; academics and instruction; behavioral interventions; testing accommodations.
- ❖ Develop a monitoring system and assign responsibilities for implementation.
- ❖ Distribute copies of plan to parents, teachers, and other appropriate individuals responsible for implementation.

Checklist: As a team, have we . . .

- ☐ Collected data to determine eligibility and need?
- ☐ Identified a current physical/mental impairment?
- ☐ Documented the substantial limitation?
- ☐ Addressed the positive impact of mitigating measures?
- ☐ Identified accommodations based on need?
- ☐ Written clear, specific plans with a mechanism for dissemination and monitoring?

“Placement” Issues

- ❖ Free appropriate public education (FAPE) – meeting the needs of persons with disabilities as adequately as the needs of persons without disabilities are met.
- ❖ Least Restrictive Environment (LRE) for students who do not need an IEP - generally assumed to be the general education environment.
- ❖ Nonacademic/Extracurricular – opportunities to participate must be nondiscriminatory (equal opportunity to participate).

Common 504 Plan Errors

- ❖ Using a predetermined checklist and checking services or accommodations that are not necessary to ensure §504 FAPE.
- ❖ Failing to match services and accommodations with student needs based on data.
- ❖ Writing vague plans.
- ❖ Failing to inform those responsible for implementation.
- ❖ Providing minimal or no monitoring of plan implementation.
- ❖ Not addressing non-academic and extra-curricular activities, when appropriate.



Helpful Hints from Dave Richards

- ❖ 504 Plan not an “All you can eat” buffet.
- ❖ Accommodations address need arising from impairment to “level the playing field”.
- ❖ Accommodations should be supported by data – more & more complex accommodations require more data.
- ❖ FAPE not a right to parent-preferred accommodations.

Procedural Safeguards

Procedural Safeguards

- ❖ Public notice of policies on nondiscrimination
- ❖ Notify parents of district's responsibility under §504
- ❖ Opportunity to examine relevant records
- ❖ Right to impartial hearing
- ❖ A grievance review procedure



Grievance and Hearing Options



- ❖ File a complaint/grievance through district complaint procedures.
- ❖ Request a hearing before an impartial hearing officer through local district
- ❖ File a Complaint with OCR.

§504 and Discipline

- ❖ 504 Eligible students have disciplinary protections – district must comply with procedural safeguards when taking disciplinary action.
- ❖ Manifestation Determination required before long-term disciplinary removal (exclusion > 10 consecutive days).
- ❖ Manifestation Determination – evaluation of the relationship between a student's disability and the behavior
 - ❖ Was behavioral infraction caused by disability?
 - ❖ Was conduct the direct result of school's failure to implement the plan?
- ❖ If misconduct is determined NOT to be caused by disability, the district may suspend the student consistent with the Code of Conduct for all students.

McKay Scholarship for §504

- ❖ Must have a §504 Accommodation Plan to be eligible for McKay Scholarship.
- ❖ Parent notification of options under McKay:
 - ❖ Within 10 days of a 504 plan developed
 - ❖ Annual notice to parents of students with 504 Plans by April 1 of each year
- ❖ Students with Temporary Plan (i.e., 504 plans of duration of 6 months or less) are not eligible for McKay.

Special Issues

Special Issues: §504 and ADHD

ADHD and Medical Diagnosis

- ❖ LEA responsible for conducting evaluation of students suspected of having a disability – §504 & IDEA.
- ❖ Physician statement/diagnosis insufficient to establish eligibility.
 - ❖ OSEP, *Letter to Gallagher*, 1996)
 - ❖ *Cle Elem-Roslyn School District* – IDELR 271 (OCR 2004)
- ❖ Medical evaluation not required under IDEA or 504 (OHI in FL does require Physician statement).
 - ❖ OSEP *Letter to Anonymous*
 - ❖ *Resource Guide for ADHD*, USDE 2008

Students with ADHD and Section 504: A Resource Guide



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ADHD & §504

- ❖ Eligible for an IEP if they meet the criteria for one of the IDEA eligibility categories & need special education (SLD, EBD, or OHI).
- ❖ If evaluated under IDEA and ineligible, district must consider if student would be covered by §504.
- ❖ District require to identify and evaluate any student who is believed to need special education.
- ❖ Students who achieve satisfactory or above average may still have a disability that substantially limits a major life activity.

ADHD & §504

- ❖ Implementation of intervention strategies must not deny or delay an evaluation.
- ❖ Must consider all major life activities & not just learning
- ❖ Must interpret the term disability broadly and cannot consider the positive effects of mitigating measures.
- ❖ If district believes that a medical assessment is necessary, the district must pay.

NOTE: §504 does not require a medical assessment for determining whether a student has ADHD.

Special Issues: §504 and Academic Access

Accelerated Coursework

- ❖ The practice of denying, on the basis of disability, a qualified student with a disability the opportunity to participate in an accelerated program violates §504.
- ❖ Conditioning participation in accelerated classes or programs on the forfeiture of necessary special education or related aids and services amounts to a denial of FAPE.
- ❖ If a qualified student with a disability requires related aids and services to participate in a regular education class or program, then a school cannot deny that student the needed related aids and services in an accelerated class or program.
- ❖ Nothing in Section 504 or Title II requires schools to admit into accelerated classes or programs students with disabilities who would not otherwise be qualified for these classes or programs.

Testing Accommodations – DOJ Guidance (ADA)

- ❖ Addresses obligations of testing entities that offer exams related to applications, licensing, certification, or credentialing for secondary, postsecondary, professional, or trade purposes.
- ❖ Who is entitled to testing accommodations, what types of testing accommodations must be provided, and what documentation may be required of the person requesting testing accommodations.

DOJ Guidance on Test Accommodations

- ❖ Who is entitled to testing accommodations?
 - ❖ Individuals with disabilities are eligible to receive necessary testing accommodations
- ❖ What types of testing accommodations must be provided?
 - ❖ Changes to the environment and auxiliary aids and services that allow individuals with disabilities to demonstrate their true aptitude or achievement.
- ❖ What documentation may be required of the person requesting testing accommodations?

Acceptable Documentation for Accommodations

- ❖ Accommodation documentation
- ❖ If a candidate previously received testing accommodations under an Individualized Education Program (IEP) or a Section 504 Plan, he or she should generally receive the same testing accommodations for a current standardized exam or high-stakes test.

Transition of SWD to Postsecondary Education: A Guide for HS Educators

- ❖ A postsecondary institution cannot exclude qualified students with disabilities from any course, course of study, or other part of its education program or activity on the basis of disability (34 CFR §104.43(c)).
- ❖ A postsecondary institution must make certain adjustments to its academic requirements and practices if they have the effect of discriminating against a student because of that student's disability.
- ❖ Postsecondary students are responsible for self-identifying and requesting accommodations and services as needed.
- ❖ The student is responsible for obtaining the necessary testing to document the existence of a disability.

Special Issues: §504 and Medical Conditions

Medical Conditions & IHCP

- ❖ Students with physical impairments, such as diabetes, asthma, allergies, or epilepsy, may be Section 504 eligible if their impairment substantially limits one or more major life activities or major bodily functions.
- ❖ Students with physical impairments often have health related needs addressed on a IHCP but OCR has determined that IHCPs are mitigating measures.
- ❖ Students with IHCPs cannot be categorically excluded from consideration for a Section 504 disability determination or services.

Guiding Principles for Section 504 Committees on Students with Individual Health Care Plans

- ❖ FDOE White Paper – April 6, 2012
- ❖ Factors to consider:
 - ❖ **Frequency** of required IHCP services
 - ❖ **Intensity** of required IHCP services
 - ❖ **Complexity** of required IHCP services
 - ❖ **Health and safety risk** if not provided
- ❖ Published in LRP Special Ed Connection – October 4, 2012

Taking 504 Pulse

- ❖ Districts have a duty to evaluate a student with a physical health impairment if the student has an IHCP that sufficiently meets his/her needs?
- ❖ District is not required to conduct a medical assessment of a student suspected of having a health-related disability but must pay if it decides a medical evaluation is necessary.
- ❖ §504 requires districts to administer medication but does not require districts to supply medication for students with disabilities

Administration of Insulin

- ❖ District policy required students with diabetes to attend a particular school if the parents wanted health services (i.e., administration of insulin) by district. If parents opted to keep child at home school, policy required parent to come to school to administer insulin.
- ❖ OCR Resolution
 - ❖ Revise district policy – district will administer insulin to students not able to self-manage & not reassign based on health need.
 - ❖ Revise student plans (IEPs, ICHPs, 504) to insure that diabetes related services will be performed by district.
 - ❖ Hold §504 Meetings for all students with IHCPs.
 - ❖ Provide compensatory education.

Special Issues: §504 and Service Animals

What is a “service animal”?

- ❖ The ADA defines a service animal as “any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.”
- ❖ Animals whose sole function is to provide emotional support, comfort, therapy, companionship, therapeutic benefits, or to promote general emotional well-being are not service animals.
- ❖ To be considered a service animal, the animal must be trained to perform tasks directly related to the person’s disability.

Service Animals

- ❖ ADA requires public entities, like schools, to modify their policies, practices and procedures to permit an individual with a disability to use his or her service animal.
 - ❖ Not generally considered to be a FAPE issue and does not mandate that schools provide or pay for service animals.
- ❖ Two questions that may be asked when a request is made: 1) whether the student for whom the request is made is an individual with a disability; and 2) whether the service animal meets the definition of “service animal” under the law.
- ❖ Decisions regarding the accommodations required for any student are made on an individual basis.
- ❖ School districts should develop specific procedures for addressing service animal requests.

Special Issues: §504 and Bullying

Bullying of Student w/ Disability

- ❖ Bullying of a student with a disability on *any* basis can result in a denial of FAPE under Section 504 .
- ❖ If there is reason to believe that the student's Section 504 FAPE services may have been affected by the bullying, the school has an obligation to remedy those effects on the student's receipt of FAPE.
- ❖ As part of a school's appropriate response to bullying on *any* basis, the school should convene the the Section 504 team to determine whether, as a result of the effects of the bullying, the student's needs have changed such that the student is no longer receiving FAPE.
- ❖ If the school suspects the student's needs have changed, the Section 504 team must determine the extent to which additional or different services are needed, ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the bullying.

OCR Guidance

- ❖ Parent and Educator Resource Guide to Section 504
- ❖ Dear Colleague Letter: ADHD & Section 504 Preventing Racial Discrimination in Special Education
- ❖ Protecting Students with Disabilities – Frequently Asked Questions About Section 504 and the Education of Children with Disabilities
- ❖ Dear Colleague Letter: Responding to Bullying of Students with Disabilities
- ❖ Transition of Students with Disabilities to Postsecondary Education: A Guide for High School Educators
- ❖ ADA Requirements for Testing Accommodations – Department of Justice

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