



U.S. Department of Education
Office for Civil Rights (OCR)

**SECTION 504
and
the Education of Students
with Disabilities in Public
Elementary & Secondary
Schools**

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KARL MENNINGER

**SUPERVISORY ATTORNEY
OCR KANSAS CITY
(816) 268-0550
KARL.MENNINGER@ED.GOV**

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What is OCR?

- Part of the U.S. Department of Education
- OCR enforces civil rights laws which represent a national commitment to end discrimination in education programs.
- 12 offices across the U.S.
- Kansas City office covers: Kansas, Missouri, Nebraska, Oklahoma, South Dakota

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How OCR Does Its Work

- Technical Assistance
 - Presentations
 - Response to Inquiries
- Complaint Processing
- Compliance Reviews
 - OCR-initiated
 - OCR reviews the policies and practices of an education institution to ensure compliance with law

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Jurisdiction

- **Title VI of the Civil Rights Act of 1964** (race, color, national origin)
- **Title IX of the Education Amendments of 1972** (sex)
- **The Age Discrimination Act of 1975** (age)
- **Section 504 of the Rehabilitation Act of 1973** (disability with regard to schools receiving public funds)
- **Title II of the Americans with Disabilities Act of 1990** (disability with regard to any public entity)
- **Boy Scouts of America Equal Access Act** (prohibits denial of equal access, or a fair opportunity to meet, and other discrimination against any group affiliated with the Boy Scouts or Title 36 youth groups)

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**Section 504 of the
Rehabilitation Act of 1973**

- Section 504 prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the U.S. Department of Education.

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Title II of the Americans with Disabilities Act

- Title II prohibits discrimination against people with disabilities by public entities, including public elementary and secondary schools and state colleges and universities.

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Section 504 and Title II

- Section 504 and Title II of the ADA have similar compliance standards.
- The definition of disability in both laws was affected by the ADA Amendments Act of 2008.

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IDEA vs. Section 504 & Title II

- IDEA is a federal statute that funds state special education programs. IDEA attaches specific conditions to the receipt of IDEA funding.
- The Office of Special Education and Rehabilitative Services (OSERS), also a component of the U.S. Department of Education, administers IDEA.
- Each state educational agency is responsible for administering IDEA within the state and distributing IDEA funds for special education programs.

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IDEA vs. Section 504 & Title II

- Section 504 and Title II of the ADA, which are enforced by OCR, prohibit discrimination on the basis of disability and do not provide any type of funding.

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IDEA vs. Section 504 & Title II

- Section 504 and IDEA have different criteria for determining who is protected under the law. Specifically, the meaning of “disability” in the IDEA is different than the meaning of “disability” in Section 504/Title II.

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IDEA vs. Section 504 & Title II

- To be protected under Section 504, a child must be a disabled person as defined under Section 504, which means:
 - having a physical or mental impairment which substantially limits one or more major life activities;
 - having a record of such impairment; or
 - being regarded as having such impairment.

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IDEA vs. Section 504 & Title II

- To be protected under IDEA, a child must have a particular disability listed in IDEA. Further, a child with a listed disability must need special education and related services as a result of the disability.
- Under Section 504, a qualified student with a disability is protected whether or not the student needs special education.

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IDEA vs. Section 504 & Title II

- Most students with disabilities are protected under IDEA *and* Section 504/Title II; however, not all students will be protected under both IDEA and Section 504/Title II.
- For example, a student with diabetes who does not need special education but may need assistance with administration of insulin would probably not be protected under IDEA, but might be under Section 504/Title II.

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IDEA vs. Section 504 & Title II

- As another example, the eligibility of a student with a speech impairment for services under IDEA creates a strong, although rebuttable, presumption that the student's speech impairment is a disability under Section 504/Title II.

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The Section 504 regulation includes

- Subpart A: General Provisions
- Subpart B: Employment Practices
- Subpart C: Accessibility
- Subpart D: Preschool, Elementary, and Secondary Education
- Subpart E: Postsecondary Education

Discussed today: A, C, D

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Subpart A: General Provisions

- No qualified individual with a disability shall, on the basis of disability, be
 - excluded from participation in,
 - be denied the benefits of,
 - or otherwise be subjected to discrimination
- under any program or activity which receives Federal financial assistance.

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A person with a disability is

- Any person who:
 - has a physical or mental impairment which substantially limits one or more major life activities;
- OR
- has a record of such an impairment;
- OR
- is regarded as having such an impairment.

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ADA Amendments Act of 2008

- Effective Jan. 1, 2009.
- Amends ADA and conforms definition of disability in Section 504 with Amendments Act.
- Retains the elements of the term “disability,” but changes the meaning of
 - “substantially limits a major life activity” and
 - being “regarded as” having an impairment.
- Requires “disability” to be construed broadly.

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Major Life Activities

The Department’s Section 504 regulations’ list of non-exhaustive major life activities is:

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

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Major Life Activities (cont.)

- The ADA Amendments Act also includes a non-exhaustive list of major life activities.
- The Amendments Act list is divided into two categories – “general” and “major bodily functions.”

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Major Life Activities (cont.)

The Amendments Act non-exhaustive list of “general” major life activities includes all activities in the Section 504 regulations and the following:

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

42 U.S.C. § 12102(2)(A)

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Major Life Activities (cont.)

The Amendments Act non-exhaustive list of “major bodily functions” is as follows:

- Functions of the immune system
- Normal cell growth
- Digestive
- Bowel Functions
- Bladder
- Brain
- Circulatory
- Endocrine
- Reproductive
- Neurological
- Respiratory

42 U.S.C. § 12102(2)(B)

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Substantially Limits and Mitigating Measures

- Prior to the Amendments Act, a covered entity was required to consider the effects of “mitigating measures” such as medication and corrective eyeglasses, when determining whether an individual was “substantially limited in a major life activity.”

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Substantially Limits and Mitigating Measures (cont.)

- Under the Amendments Act the “ameliorative effects of mitigating measures” must not be considered when determining if an individual is a person with a disability. 42 U.S.C. § 12102(4)(E)

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Mitigating Measures and the Amendments Act

No Definition – Non-exhaustive List:

- Assistive Technology
- Reasonable accommodations or auxiliary aids or services
- Learned behavioral or adaptive neurological modifications
- Medication, prosthetics, hearing aids (non-exhaustive list)

42 U.S.C. § 12102(4)(E)(i)

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Amendments Act Exception to Mitigating Measures Analysis

- The ameliorative effects of ordinary eyeglasses/contact lenses shall be considered in determining if an impairment substantially limits a major life activity. 42 U.S.C. § 12102(4)(E)(ii),(iii).

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Episodic Impairments

- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. 42 U.S.C. § 12102(4)(D).

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Mitigating Measures and the Amendments Act – What Does This Mean?

- A school should make the determination of whether a student with a mental illness is an individual with a disability without considering any medication used to manage the impairment.
- For a student with a respiratory impairment, without regard to the use of oxygen therapy.

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Mitigating Measures and the Amendments Act – What Does This Mean?(cont.)

- For a student with a physical impairment, without regard to the use of a prosthetic device.
- For a student with a traumatic brain injury, without regard to the use of assistive technology such as an augmentative communication device or a computer adapted for the student’s physical needs.

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Subpart C: Accessibility

- A recipient of Federal funds may not deny the benefits of its program or services to a qualified person with a disability because its facilities are inaccessible.

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Subpart D: Preschool, Elementary, and Secondary Education

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Free Appropriate Public Education in Public Schools

- A 504 regulation requires recipients to provide a "free appropriate public education" (FAPE)
 - to each qualified student with a disability
 - who is in the school district's jurisdiction,
 - regardless of the nature or severity of the disability.

FAPE

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Appropriate Education

- Appropriate education is defined as the provision of regular or special education and related aids and services designed to meet the student's individual needs as adequately as the needs of non-disabled persons are met.
- Implementation of an IEP under IDEA is one way of meeting the standard.

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Location and Notification

Every year, each district must:

- Undertake to identify and locate qualified persons with a disability in the district who are not receiving a public education
- Take appropriate steps to notify disabled persons and their parents/guardians of the district's duty under Section 504

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Evaluation

- Section 504 establishes procedures designed to ensure children are not
 - misclassified,
 - unnecessarily labeled as having a disability,
 - or incorrectly placed
 - based on inappropriate selection, administration, or interpretation of evaluation materials.

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Evaluation, cont'd

- School districts are required to individually evaluate a student who, because of a disability, needs (or is believed to need) special education or related services
 - before initial placement of the person in a regular or special education program
 - before any significant changes in placement

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Evaluation, cont'd

- Periodic re-evaluation is required
- Re-evaluation procedure consistent with the IDEA is one means of meeting requirement, but is not required

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Evaluation Procedures

- School districts are required to establish standards and procedures to ensure that tests and other evaluation materials:
 - Are validated for purpose being used,
 - Are administered by trained personnel,

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Evaluation Procedures, cont'd

- Include materials tailored to assess specific areas of educational need, and
- Accurately reflect student's aptitude or achievement and not student's impaired sensory, manual, or speaking skills (except where those skills are the factors the test purports to measure).

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Placement Under Section 504

- Once a student is identified as a qualified student with a disability under Section 504, a decision must be made regarding the type of services the student needs.

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Placement (cont.)

- School districts are required to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students as adequately as the needs of students without disabilities are met.

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Placement Procedures

In interpreting evaluation data and making placement decisions:

- School districts are required to draw from a variety of sources
- All significant factors related to the student's learning process must be considered

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Placement Procedures (cont.)

- Sources may include:
 - aptitude and achievement tests
 - teacher recommendations
 - physical condition
 - social or cultural background
 - adaptive behavior
- The student's individual circumstances must be considered in determining the weight accorded various sources

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Placement Procedures (cont.)

- School districts must establish procedures to ensure that information obtained from all sources is documented and carefully considered
- Districts may not rely on assumptions regarding persons with disabilities or classes of such persons

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Placement Procedures (cont.)

- Decisions must be made by a group that includes persons knowledgeable about:
 - the student
 - the meaning of the evaluation data
 - the placement options

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Academic Setting

- Could consist of:
 - education in regular classrooms
 - education in regular classes with supplementary services, and/or
 - special education and related services

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Academic Setting

- Each qualified student with a disability is to be educated with students without disabilities to the maximum extent appropriate to the needs of the student with a disability.
- Students with disabilities should be placed in the regular education environment unless the students' education cannot be achieved there satisfactorily with the use of supplementary aids and services.

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Non-Academic Services

- Students with disabilities must participate with non-disabled students in nonacademic and extracurricular activities and services to the maximum extent appropriate.

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Comparable Facilities

- If a district operates a facility for persons with disabilities, the district shall ensure that the facility and the services and activities are comparable to the other facilities, services, and activities of the district.

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Section 504 Procedural Safeguards

- The school district must provide a system of procedural safeguards regarding identification, evaluation, and educational placement.

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Procedural Safeguards

- Notice
- Relevant records review by parent or guardian
- An impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel
- A review (appeal) procedure

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Other Requirements

- Designate at least one person to coordinate Section 504 compliance
- Adopt grievance procedures that
 - **provide for prompt and equitable resolution of complaints**
 - **incorporate appropriate due process standards**

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Technical Assistance: KS, MO, NE, OK, SD

- Call the OCR Kansas City Regional Office at:
 - (816) 268-0550 (voice)
 - 1-877-521-2172 (TDD) or Federal Relay Service (FRS) at 1-800-877-8339

OCR on the internet:

www.ed.gov/ocr

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