



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

THE ASSISTANT SECRETARY

July 19, 2022

Dear Colleague:

I write to share information for schools, school districts, State officials, parents and guardians, and students about how Section 504 of the Rehabilitation Act of 1973 (Section 504), a Federal civil rights law that prohibits discrimination based on disability, applies to the use of student discipline.¹

This guidance² describes schools' responsibilities under Section 504 to ensure nondiscrimination against students based on disability when imposing student discipline.³ Specifically, the guidance explains how compliance with Section 504's requirement to provide a free appropriate public education (FAPE) to students with disabilities can assist schools in effectively supporting and responding to behavior that is based on a student's disability and that could lead to student discipline. By using Section 504's procedures to identify and meet the behavioral, social, emotional, and academic needs of students with disabilities as required for FAPE, schools can help prevent or reduce behaviors that might otherwise result in discipline. As the guidance explains, when schools do choose to administer discipline for students with disabilities, they must do so in a nondiscriminatory manner.

Schools need not choose between keeping their school community—including students and school staff—safe or complying with the law. Schools are required not to discriminate against students with disabilities on the basis of disability, a responsibility that extends to the conduct of everyone with whom the school has a contractual or other arrangement, such as school district

¹ 29 U.S.C. § 794; 34 C.F.R. pt. 104. The Office for Civil Rights (OCR) enforces Section 504 for all programs and activities that receive Federal financial assistance from the U.S. Department of Education (Department), including those of public elementary and secondary schools, local educational agencies, State educational agencies, preschools, and private schools that receive such assistance.

² The Department has determined that this Dear Colleague Letter is significant guidance under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), <https://www.federalregister.gov/documents/2007/01/25/E7-1066/final-bulletin-for-agency-good-guidance-practices>. If you are interested in commenting on this guidance, please email us your comment at OCR@ed.gov or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. For further information about the Department's guidance processes, please visit <https://www2.ed.gov/policy/gen/guid/significant-guidance.html>.

³ This guidance is issued to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that the Department enforces. The Department's legal authority is based on those laws. Except for the underlying statutory or regulatory requirements referenced in this Dear Colleague Letter, this significant guidance is nonbinding and does not create or impose new legal requirements. Instead, it provides information and examples to inform recipients about how the Department evaluates whether covered entities are complying with their legal obligations.

SUPPORTING STUDENTS WITH DISABILITIES AND AVOIDING THE DISCRIMINATORY USE OF STUDENT DISCIPLINE UNDER
SECTION 504 OF THE REHABILITATION ACT OF 1973

police officers or school resource officers. Nothing in Section 504, however, prohibits a school from responding to emergency circumstances or from taking appropriate, nondiscriminatory steps to maintain safety while supporting students learning how to be accountable for the impact of their actions on others. As the guidance explains, when a student’s behavior is based on disability, including when the behavior significantly impairs other students’ education or threatens the safety of the student or others, the student’s Section 504 team is responsible for considering the impacts of the behavior on others when determining the appropriate placement for the student. This consideration could result in a change to the educational setting for the student with a disability or in a change to the student’s services or supports to more effectively address the behavior and ensure safety. Furthermore, Section 504 FAPE requirements do not interfere with a school’s ability to address extraordinary situations in which a student’s behavior, including disability-based behavior, is an immediate threat to their own or others’ safety, such as by contacting crisis intervention specialists or law enforcement. Complying with Section 504’s general nondiscrimination and FAPE requirements helps to ensure an educational environment that is nondiscriminatory, supportive, positive, inclusive, productive, and safe for all.

OCR appreciates schools’ many efforts to support and respond to students’ behavioral needs in order to prevent the use of student discipline, and, when discipline is used, to implement disciplinary policies, practices, and procedures fairly and consistent with all Federal civil rights laws.⁴ Nonetheless, OCR’s continued enforcement experience reflects that many students with disabilities face discipline because they are not receiving the support, services, interventions, strategies, and modifications to school or district policies that they need to manage their disability-based behavior. Additionally, many students with disabilities are subjected to discrimination based on their disability when being disciplined, such as when students with disabilities are unnecessarily disciplined more severely than students without disabilities for the same or similar behavior.

OCR is committed to ensuring equal access to education for all students and to promoting educational excellence at the nation’s schools through the vigorous enforcement of students’ civil rights. An important part of our mission is to ensure that students are not denied equal educational opportunity or subjected to discrimination based on their disabilities, including through the improper use of discipline.

I look forward to working with you to achieve this shared goal.

Sincerely,

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

⁴ In addition to Section 504, OCR enforces other Federal laws that prohibit discrimination based on disability, race, color, national origin, sex, and age. For OCR guidance on topics under these laws, please visit <http://www.ed.gov/ocr>.