



## FACT SHEET

### Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973

On July 19, 2022, the Department of Education’s Office for Civil Rights (OCR) issued guidance called *Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973*.

The guidance reminds public elementary and secondary schools of their obligations under a Federal disability civil rights law, Section 504 of the Rehabilitation Act of 1973 (Section 504), to provide the services, supports, interventions, strategies, and modifications to policies students with disabilities need to address any disability-based behavior, including behavior that could lead to discipline. The guidance explains that when schools do discipline students with disabilities, they must do so in a nondiscriminatory manner.

Nothing in Section 504 prohibits a school from responding to emergency circumstances or from taking appropriate, nondiscriminatory steps to maintain safety—for both students and school staff—and to support students in learning how to be accountable for the impact of their actions on others.

This *Fact Sheet* summarizes the guidance; for more information, including relevant legal authorities, please see the guidance, available [here](#).

#### **FAPE and Student Discipline under Section 504<sup>1</sup>**

Section 504’s free appropriate public education (FAPE) provisions require schools to provide students with disabilities regular or special education, and related aids and services, that: (1) are designed to meet the student’s individual educational needs as adequately as the needs of students without disabilities are met; and (2) satisfy Section 504’s requirements for evaluation and placement, educational setting, and procedural safeguards.

Parents or guardians who disagree with a decision related to their child’s FAPE have the right to challenge the decision using Section 504’s procedural safeguards.<sup>2</sup>

OCR enforces the Section 504 rights of all students with disabilities, including those who may also receive services under the Individuals with Disabilities Education Act (IDEA). The IDEA requires schools to provide FAPE to students with disabilities who are eligible under the IDEA. The Office of Special Education and Rehabilitative Services (OSERS) administers the IDEA. This fact sheet addresses only Section 504 FAPE, so for information about the IDEA, please see OSERS’s guidance, available [here](#).

*This Fact Sheet summarizes public schools’ obligations under Section 504 to:*

- *Provide a free appropriate public education to K-12 students with disability-based behavior;*
- *Make reasonable modifications to disciplinary policies for students with disabilities; and*
- *Administer student discipline requirements in a nondiscriminatory manner.*

<sup>1</sup> 34 C.F.R. § 104.33. For more information, please refer to the guidance at 4-24.

<sup>2</sup> 34 C.F.R. § 104.36. For more information, please refer to the guidance at 13.

### ■ Evaluation<sup>3</sup> and Placement<sup>4</sup>

A school must conduct an initial evaluation, at no cost to parents or guardians and regardless of whether a parent or guardian has requested an evaluation, when the school has reason to believe a student needs special education or related aids and services due to a disability, including when a student's behavior indicates that they may have a disability. Evaluations need to be conducted in a timely manner for a school to meet its FAPE duties.

If a student is doing well academically, that fact does not justify denying or delaying an evaluation when the school has reason to believe the student has a disability. Schools must respond to parent or guardian requests for an evaluation, and a denial of the request can be challenged under the procedural safeguards.

Evaluations must be conducted by trained personnel and interpreted by a group of persons (which can include the student's parents or guardians) who are knowledgeable about the student, the meaning of the evaluation data, and the placement options, as described below. Evaluations must be based on relevant information about the student from a variety of sources. When a student's evaluation shows that challenging behavior is based on disability, a team of knowledgeable individuals, usually called the student's Section 504 team, is responsible for determining the services and supports the school must provide to address the behavior.

"Placement" refers to the individualized educational instruction, services, supports, interventions, and modifications to policies a student receives from the school. The Section 504 team is responsible for identifying, and the school must provide, the placement needed for that student to receive FAPE.

Although a written plan is not explicitly required by Section 504's regulations, schools often record these services and supports in a document called a Section 504 plan. A student's Section 504 plan could include: the behavioral supports that the student needs to address behavior interfering with their own or other students' ability to learn, and a description of specific disability-based behavior for which the student will not be disciplined under the school's code of conduct. For example, a Section 504 team may decide that a particular student with a disability needs a behavioral intervention plan based on the results of a functional behavioral assessment. By providing individualized services and behavioral supports to a student with a disability to meet their needs, schools can help reduce or eliminate behavior that otherwise might lead to violations of school rules and disciplinary consequences.

If a student continues to have behavioral challenges based on their disability despite the school fully implementing their Section 504 plan, the student's placement may not be adequately addressing the behavior. The Section 504 team may reconvene to determine if additional or different services are necessary. If an adjustment in services does not adequately address the behavior, an additional evaluation may be necessary to identify the student's current needs and develop additional or different supports.

### ■ Educational Setting<sup>5</sup>

To the maximum extent appropriate for their needs, students with disabilities have a right to receive FAPE alongside students without disabilities. For many students, the appropriate educational setting is the regular educational environment where students without disabilities participate in school. All students with disabilities are entitled to FAPE, and the behavioral supports they need, no matter the setting.

#### KEY POINTS:

*Schools must, in a timely manner, evaluate a student at no cost to the student's parents or guardians when the school has reason to believe the student may have a disability.*

*The student's Section 504 team determines the student's placement, including any behavioral supports a student may need.*

<sup>3</sup> 34 C.F.R. § 104.35(a)-(b). For more information, please refer to the guidance at 6-10.

<sup>4</sup> 34 C.F.R. § 104.35(c). For more information, please refer to the guidance at 8-11.

<sup>5</sup> 34 C.F.R. § 104.34. For more information, please refer to the guidance at 11-12.

## ■ Disciplinary Removals that Significantly Change a Student’s Placement<sup>6</sup>

Exclusionary discipline refers to the removal of a student, whether on a short-term or long-term basis, from a class, school, or other educational program or activity for violating a school rule or code of conduct. Examples of exclusionary discipline can include detentions, in-school suspensions, out-of-school suspensions, suspensions from riding the bus, expulsions, disciplinary transfers to alternative schools, and referrals to law enforcement, including referrals that result in arrest for school-related actions.

### KEY POINTS:

*A school must first evaluate a student with a disability to determine if their behavior is based on disability before imposing any of the following disciplinary actions for the student’s behavior:*

- *An expulsion;*
- *A suspension over 10 school days in a row; or*
- *A suspension for less than 10 school days if there is a pattern of disciplinary removals for the student totaling more than 10 school days in the school year.*

Sometimes schools informally exclude students without invoking the school’s disciplinary procedures, such as by requiring a parent or guardian to pick up their child early from school or assigning a student with a disability to a shortened school day schedule without first convening the student’s Section 504 team. Informal exclusions are subject to the same Section 504 requirements as formal disciplinary exclusions.

Schools must conduct an additional evaluation of a student with a disability under Section 504, referred to in the guidance as a manifestation determination,<sup>7</sup> before implementing a disciplinary removal that will result in a significant change in placement. A significant change in placement due to discipline means: (1) a removal from class or school for longer than 10 consecutive school days, or (2) a series of removals from class or school that together total more than 10 school days in a school year and constitute a pattern of removal. Examples include expulsions and certain suspensions. Accurate records of the basis for excluding the student and the time during which the student was excluded are needed for a school to determine whether and when a proposed disciplinary removal would be a significant change in placement.

The purpose of this evaluation beforehand is to determine whether the behavior for which discipline is proposed is based on the student’s disability, and, if so, whether changes in the student’s placement are required to ensure the student receives FAPE. A school must provide notice to the student’s parent or guardian before the school proposes discipline that would constitute a significant change in a student’s placement.

If, after a full review of the information obtained from the evaluation, the Section 504 team determines that the student’s behavior is a manifestation of a disability, the school may not carry out any discipline that would exclude the student on the basis of disability. A finding that the student engaged in disability-based behavior in violation of a school rule could be one reason to believe that the student’s placement may be inappropriate and that the student may need additional or different services, such as behavioral supports, or a change in educational setting, to ensure FAPE. Therefore, the Section 504 team must continue the evaluation process to determine if the student’s current placement is appropriate, including whether the student’s behavior interferes with their own or other students’ ability to learn.

<sup>6</sup> 34 C.F.R. §§ 104.33(a), (b), 104.35(a), (c), 104.36. For more information, please refer to the guidance at 14-21.

<sup>7</sup> The IDEA’s regulations use the term “manifestation determination” in connection with determining whether the conduct for which certain discipline is proposed is a manifestation of a student’s disability. See 34 C.F.R. § 300.530(e). Section 504’s regulations do not use the term “manifestation determination” but require an “evaluation” prior to a significant change in placement. See 34 C.F.R. §104.35(a). For purposes of this document, this type of evaluation is referred to as a “manifestation determination.” Although a manifestation determination under IDEA and Section 504 have the same purpose, different regulatory requirements apply. For more information about the IDEA, please refer to OSERS’s guidance, *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, available [here](#).

If the Section 504 team determines that the student’s behavior was **not** based on the student’s disability, school officials may discipline the student, as long as they do so in the same manner in which they discipline similarly situated students without disabilities. Parents or guardians can challenge these and other determinations, if they disagree with them, by using Section 504’s procedural safeguards.

### **Section 504’s General Nondiscrimination Requirements and Student Discipline<sup>8</sup>**

Under Section 504, disability discrimination means excluding, denying benefits to, or otherwise discriminating against someone based on disability. It includes relying on stereotypes, generalizations, or assumptions about a student based on their disability, or about individuals with disabilities generally, when making decisions about the student’s education.

<p style="text-align: center;"><b>KEY POINTS:</b></p> <p style="text-align: center;"><i>Disability discrimination includes:</i></p> <ul style="list-style-type: none"><li>• <i>not making needed reasonable modifications;</i></li><li>• <i>unnecessarily treating a student differently based on disability; and</i></li><li>• <i>implementing a policy with unjustified discriminatory effects based on disability.</i></li></ul>
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#### **■ Reasonable Modifications<sup>9</sup>**

Under Section 504, schools must make reasonable modifications to their criteria, policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. In the discipline context, reasonable modifications could include not applying a particular policy to a student with a disability for disability-based behavior or adapting a school policy to support a student’s behavioral needs.

#### **■ Discriminatory Different Treatment<sup>10</sup>**

To provide equal opportunity, schools sometimes must treat students with disabilities differently than students without disabilities, such as by providing FAPE and making reasonable modifications. However, a school may not unnecessarily treat a student with a disability differently based on disability. For example, a school may not discipline a student with a disability more severely than students without disabilities unless it has a legitimate, nondiscriminatory reason for doing so.

#### **■ Discriminatory Effects<sup>11</sup>**

A school policy or practice that is neutral on its face may still have the unjustified discriminatory effect of denying a student with a disability meaningful access to the school’s aid, benefits, or services, or of excluding them based on disability, even if the discrimination is unintentional. For example, OCR may find that a policy that automatically imposes detention for any use of profanity has an unjustified discriminatory effect on a student whose Tourette’s Syndrome sometimes causes the student to curse involuntarily.

### **Where Can I Find Additional Information?**

For more information, please contact OCR at 1-800-421-3481 (TDD 1-800-877- 8339) or [ocr@ed.gov](mailto:ocr@ed.gov), or visit [www.ed.gov/ocr](http://www.ed.gov/ocr). Please visit [www.ed.gov/ocr/complaintintro.html](http://www.ed.gov/ocr/complaintintro.html) to learn about filing an OCR complaint.

If you have difficulty understanding English, you may ask OCR to provide language access services or resources, which may include oral technical assistance or written translation of a publicly available OCR document, free of charge, by contacting OCR at [ocr@ed.gov](mailto:ocr@ed.gov).

*Please note that other than the underlying statutory and regulatory requirements referenced in this document, the contents of this document do not have the force and effect of law and do not bind schools or others. This document is intended only to provide clarity to the public on existing requirements under the law.*

<sup>8</sup> 34 C.F.R. § 104.4. For more information, please refer to the guidance at 27-32.

<sup>9</sup> *Id.* For more information, please refer to the guidance at 24-27.

<sup>10</sup> 34 C.F.R. § 104.4(a), (b)(1)(i)-(v), (vii). For more information, please refer to the guidance at 27-30.

<sup>11</sup> 34 C.F.R. § 104.4(b)(4). For more information, please refer to the guidance at 30-32.