

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

November 07, 2020

On September 28, 2020, the U.S. Department of Education's Office for Civil Rights (OCR) issued updated guidance to address the potential for discrimination on the basis of disability as schools begin to reopen for in-person instruction. In a series of questions and answers, OCR emphasized that school districts must ensure that students with disabilities receive a free appropriate public education (FAPE) under Section 504 of the Rehabilitation Act of 1973 (Section 504) or the Individuals with Disabilities Education Act (IDEA) and have access to public facilities under Title II of the Americans with Disabilities Act (ADA), while also preventing the spread of COVID-19.

Specifically, OCR provided the following guidance applicable to schools reopening for in-person instruction:

- School districts may prioritize returning students with disabilities to school for in-person instruction if a student's educational and disability-related needs require in-person instruction to receive a FAPE or avoid discrimination.
- Students who are precluded from receiving in-person instruction due to a doctor's recommendation or exposure to COVID-19 still must receive the services and supports in their IEPs or 504 plans.
- School districts should make reasonable accommodations in their policies, practices, and procedures for students who are unable to wear a face covering and require in-person instruction to receive a FAPE.
- All decisions about the provision of distance learning, in-person instruction, or reasonable accommodations should be made on a student-by-student basis in consideration of the student's individual disability-related needs.
- School districts may not require families to waive any rights afforded to students under Section 504 as a condition of receiving online services.

In addition, OCR clarified that Section 504 and the ADA continue to apply to school districts



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during distance learning. However, every failure to implement an aid, service, or accommodation/modification in an IEP or section 504 plan does not automatically constitute a violation of Section 504 and the ADA. Instead, OCR will take into consideration “all relevant circumstances,” including the student’s ability to participate in or benefit from the services the district did offer. School districts can also make an individualized determination about whether a student’s IEP or 504 plan requires revision to address changes resulting from continued school closures.

Finally, with respect to Section 504 evaluations, OCR reminded school districts that they continue to be responsible for conducting evaluations during school closures, but can mutually agree with parents to waive or postpone assessment timelines. Similarly, while OCR encouraged school districts to make “good faith efforts” to conduct assessments virtually or via other comparable methods, to the extent possible and in conformance with the test producer’s instructions, when in-person evaluations are impracticable or invalid, OCR noted that Section 504 does not prohibit agreements between parents and the school district to utilize a diagnostic placement for a student until an appropriate comprehensive evaluation can be conducted safely.

If you have any questions about this issue or other student matters, please do not hesitate to contact a DWK attorney in our Students and Special Education (SPED) practice group.