

2026 Summer Workshop: The Section 504 Process for Students

Thursday, July 23, 2026

Presented by

**Anne McGinnis, Jeffrey Weiss,
Andrew Mark and Kathryn Stiffler**

Panelists



Anne M. McGinnis, Ph.D.

Member – Rochester, NY
amcginnis@bsk.com | (585) 362-4791



Jeffrey J. Weiss

Member – Buffalo, NY
jweiss@bsk.com | (716) 416-7111



Andrew R. Mark

Senior Associate – Buffalo, NY
amark@bsk.com | (716) 416-7109



Kathryn M. Stiffler

Associate – Rochester, NY
kstiffler@bsk.com | (585) 362-4700

Meaningful Access

- Section 504 is designed to provide students with “meaningful access” to a school district’s educational opportunities and programs.
- Courts have determined that this does not require “equal access,” “preferential treatment,” or “optimal” accommodations.
- Instead, it requires school districts, when possible, to provide reasonable accommodations to enable students to participate in their programs and activities

Section 504: “Leveling the Playing Field”

- Not an affirmative action statute.
- Provides equal opportunity and access through, among other things, accommodations and services.
- Prohibits discrimination against individuals with disabilities.



Who is Subject to Section 504's Requirements?

- Any entity that receives federal funding is subject to Section 504's requirements.
- In nearly all instances, public school districts receive federal funding and are therefore subject to Section 504.

Who is Subject to Section 504's Requirements?

- In some instances, nonpublic schools receive federal funding and are therefore subject to Section 504, but their requirements under Section 504 are less stringent than those governing public schools.
- A nonpublic school subject to Section 504 only has a general duty to accommodate students with disabilities (i.e., nonpublic schools are not required to develop and implement Section 504 plans for their students).

Child-Find Obligations – Public & Nonpublic Schools

- District-Wide Section 504 Child-Find Obligations for Public Schools:
 1. Policy. Each school district must have a policy that ensures that all disabled children *residing within the district* are properly identified and located. The policy must be in writing.

Child-Find Obligations – Public & Nonpublic Schools

2. Elements of a Child-Find Program. A district's child-find program must:
 - a. Provide notice to the public of educational opportunities available to individuals with disabilities.
 - b. Provide information on the availability of services to local agencies and facilities.
 - c. Maintain a list of individuals with disabilities within the age range who may or may not be receiving services.
 - d. Post annual child-find notices in public places.

Child-Find Obligations – Public & Nonpublic Schools

- Students Attending Nonpublic School: Different Child-Find Obligations Under the IDEA and Section 504.
 1. *IDEA*. Distinct from the Section 504 child-find obligations, Education Law § 3602(c)(2-a) was amended several years ago to modify a school district's child-find responsibilities for those students in nonpublic schools who may be eligible for services under the IDEA.
 - Each school district is responsible for monitoring ***students who attend nonpublic school within its geographic boundaries***, regardless of their district of residence.

Child-Find Obligations – Public & Nonpublic Schools

IDEA cont'd...

- When a school district, through its child-find process, determines that a student attending a nonpublic school within its geographic boundaries is suspected of having a disability, it is required to immediately refer the student to its CSE to evaluate the student and if necessary develop an individualized education service plan (IESP).
- If that school district (the district of location) develops an IESP, it is responsible for providing the services set forth therein and may generally recover its expenses from the student's district of residence.

Child-Find Obligations – Public & Nonpublic Schools

2. *Section 504.* In contrast to the IDEA, a school district's child-find obligations under Section 504 to students attending nonpublic schools extend only to those ***students who reside in its geographic boundaries***. As such, a school district is not required to locate and evaluate a non-resident Section 504 student who attends a nonpublic school within its geographic boundaries.

Child-Find Obligations – Public & Nonpublic Schools

- But who provides the Section 504 accommodations?

Despite the district of attendance's child-find obligations, in the case of a Section 504 student attending a nonpublic school, the only entity that may have an obligation to actually accommodate the student (e.g., provide services or accommodations) would be the nonpublic school, but only if it receives the federal funds.

Eligibility Under Section 504

- *Who is eligible for a Section 504 Plan?* A student is considered to have a disability under Section 504 if he:
 1. Has a physical or mental impairment that substantially limits one or more of his major life activities.

Students also receive antidiscrimination protections – even if they do not require services, when they:

1. Have a record of an impairment; or
2. Are regarded as having an impairment.

Eligibility for Services Under Section 504

- *Major Life Activities.* The ADA Amendments Act statutorily expanded the definition of “major life activities” in the ADA and Section 504 to include:

1. caring for oneself;
2. performing manual tasks;
3. seeing;
4. hearing;
5. eating;
6. sleeping;
7. walking;
8. standing;
9. lifting;
10. bending
11. speaking;
12. breathing;
13. learning;
14. reading;
15. concentrating;
16. thinking;
17. communicating; and
18. working.

Eligibility for Services Under Section 504

- The ADA Amendments Act also added a new group of major life activities referred to as “major bodily functions” which include:
 1. functions of the immune system;
 2. normal cell growth;
 3. digestive;
 4. bowel;
 5. bladder;
 6. neurological;
 7. brain;
 8. respiratory;
 9. circulatory;
 10. endocrine; and
 11. reproductive functions.

Eligibility for Services Under Section 504

- *Mitigating Measures.* The ADA Amendments Act expressly directs that disability determinations are to be made without considering mitigating measures such as medication, assistive technology, or mobility services.
 - One exception: ordinary eyeglasses and contact lenses may be considered.

Eligibility for Services Under Section 504

- Is a health plan a mitigating measure:
 - Yes.
- What about a student with a disability who does not require services or accommodations from his School District?
 - Although the student does not require a Section 504 Plan, he or she would still be able to pursue a cause of action for discrimination based on his disability status if he was subjected to discrimination on that basis.

Temporary Disabilities

- The Standard Under the ADA Amendments Act:
 - Under the ADA Amendments Act, a temporary impairment does not constitute a disability unless it results in a substantial limitation of one or more major life activities for an extended period of time.
 - The ADA Amendments Act adds, however, that an impairment with *an actual or expected duration of six months or less is a “transitory impairment”* which does not render the individual eligible for services under the ADA or Section 504.

Temporary Disabilities

- Two exceptions to the Six Month Rule – Impairments that are **Episodic** or in **Remission**.
 - The ADA Amendments Act does carve out two exceptions to the six-month rule for eligibility based on a temporary disability. An individual with an impairment that is episodic or in remission may be eligible for Section 504 services if the impairment would substantially limit a major life activity when active. So, for example, a student with cancer in remission or a student with epilepsy who has a seizure once or twice each year, may be eligible for a Section 504 plan.

Section 504 Referral

- When Should a Student be Evaluated for Classification Under Section 504?
 1. When a parent expresses concern that his child is in need of special education and related services or specifically requests an evaluation of the student.
 2. When the student's behavior or academic performance demonstrates the need for services.
 3. When the student's teacher or other personnel expresses concern about the student's behavior or performance.

Judgment Call: Should the Referral be Made to the CSE or Section 504 Team?

- There are many factors to consider when assessing whether to refer to the CSE or Section 504 team, including the following:
 1. Does it appear as if the student will only require accommodations?
 2. Does it appear as if the student will require modifications to the curriculum in order to progress academically?
 3. Does it appear as if the student will require specialized instruction from a special education teacher, such as by a consultant teacher or resource room teacher?

Judgment Call: Should the Referral be Made to the CSE or Section 504 Team?

4. Does it appear as if the student will require services in a special class setting (e.g., 15:1, 12:1:1, 8:1:1)?
5. Does it appear as if the student's services will be limited to related services (e.g., speech, OT, PT,...)? If so, does it appear as if the student will need multiple related services which would remove him from the general education setting for considerable time?

Procedural Rules Under Section 504

- Evaluation Procedures:

When evaluating a student, the Section 504 team must ensure that:

1. All test and evaluation materials have been validated:
 2. All evaluations are administered by trained personnel; and
 3. All evaluations accurately reflect the factors they purport to measure.
- The Section 504 team must also consider information from a *variety of sources*.

Procedural Rules Under Section 504

- What Should be Evaluated?

Section 504 requires the 504 team only to evaluate the student's specific areas of educational need.

- Evaluation Timelines:

There are no express timelines for evaluations under Section 504. OCR has determined that evaluations should be completed “within a reasonable period of time.”

Procedural Rules Under Section 504

- Parental Consent:

Section 504 does not expressly require consent for evaluations or the provision of services. OCR has determined, however, that parental consent is necessary for an initial evaluation and the initial implementation of a Section 504 Plan.

- Parental Withdrawal of Consent:

Federal and state laws permit parents to unilaterally revoke consent for IDEA services at any time, for any reason – or no reason at all. This rule presumably also applies to Section 504, which would therefore enable parents to withdraw consent for the provision of Section 504 services.

Procedural Rules Under Section 504

- Re-Evaluations:

The Section 504 statute does not expressly state whether and, if so, how frequently, a Section 504 student should be re-evaluated. But according to OCR, periodic re-evaluations are required. Unfortunately, OCR has not defined the term “periodic.” OCR has explained that re-evaluations “may” be conducted in accordance with the IDEA’s three-year rule governing reevaluations or more frequently, if conditions warrant or if there is a parental or teacher request for a re-evaluation.

Procedural Rules Under Section 504

- Annual Reviews:

Section 504 does not expressly require the 504 team to conduct annual reviews to discuss the student's current needs and placement. Instead, OCR has determined that the 504 team should meet “periodically” for each Section 504 student. Instead, OCR has also determined that the 504 team will fulfill its obligations regarding periodic meetings if it meets annually.

- Change in Placement:

Section 504 requires the 504 team to evaluate a student before any significant change of placement.

The Section 504 Team

- There are no express statutory requirements for composition of a Section 504 team.
- The federal regulations provide that “the placement decision is made by a *group* of persons, including persons knowledgeable about the child, the meaning of the evaluation data and the placement options.”
34 CFR 104.35(c)(3).
- The parent should be invited to all Section 504 team meetings.

The Elements of a Section 504 Plan

- At a minimum, a Section 504 Plan must contain the following information:
 - Why the 504 team believes that the student is eligible for services under Section 504.
 - How the identified disability substantially limits a specific major life activity.
 - To the extent necessary, the plan should describe both the necessary accommodations and the responsibilities of the staff, parents and student in implementing those accommodations.

The Elements of a Section 504 Plan

- Examples of Accommodations are:
 - Building accommodations;
 - Classroom accommodations;
 - Support services;
 - Environmental accommodations; and
 - Organizational strategies.
- A Section 504 team is also required to develop and implement a behavioral management plan for any Section 504 student who exhibits recurrent behaviors that significantly detract from his ability to benefit from educational services, and that cannot be curtailed by regular disciplinary procedures.

Modification of Curriculum is Prohibited

- Section 504 plans usually call for accommodations in a regular education classroom.
- Section 504 does not call for the lowering of academic standards or the modification of the student's program or curriculum.

Range of Permissible Services and Accommodations

- Consistent with its goal of enabling students to participate in the regular education setting, Section 504 permits the following:
 1. Classroom accommodations;
 2. Testing accommodations; and
 3. Related services designed to enable the student to participate in a regular classroom setting.
- Students who require special education instruction should be referred to the CSE for an IEP.

Classroom Accommodations

- Included on 504 plan to support regular education classes.
 - This informs general education teacher of his/her role in implementing that portion of the 504 plan.
- Shouldn't most classroom accommodations just be a part of good teaching practices?
 - Yes, but some are really an “extra.”
 - But “good teachers” provide a lot of individualized support or “best practices.”

Testing Accommodations – Definition

- Changes in the standard administration of a test, including testing procedures or formats, that enable students with disabilities to participate in assessment programs on an equal basis with their nondisabled peers.

Testing Accommodations

- Testing accommodations change:
 - The way in which test items are presented to the student;
 - The student's method of responding;
 - The setting in which the test is administered; and
 - The timing and scheduling of the assessment.

Testing Accommodations

- Testing accommodations should not have qualifying terms such as “as appropriate” or “when necessary.”
- Testing accommodations should not be indicated in a test-specific manner, such as “a calculator shall be provided for the final examination in mathematics.”
- They do not alter the construct of the test being measured or invalidate the results.

Don't Forget to Notify Substitute Teachers about IEPs, Section 504 Plans and Health Care Plans

- A school district should have procedures in place to ensure that its substitute teachers and staff members are aware of their students' needs, including most notably any medical needs set forth in an IEP, Section 504 plan and/or health/medical plan.
- This is generally permissible under FERPA if the school district defines "school official" in its annual notification of FERPA rights to include substitute teachers.

Enforcement of Claims Under Section 504

- Claims alleging violation of Section 504 may be raised in a federal lawsuit (after the student exhausts his administrative remedies by requesting a due process hearing or internal grievance) or submitted in a complaint to the United States Department of Education's Office for Civil Rights.
- NYSED does not have jurisdiction over Section 504.

Parental Rights Under Section 504

- The right to receive all information in the parent's native language and primary mode of communication.
- The right to request an evaluation.
- The right to reevaluation before any significant change in program, service or placement.
- The right to notice of any proposed actions related to eligibility and services.
- The right to examine all relevant records.
- The right to challenge an alleged Section 504 violation by filing a grievance with the district.

Parental Rights Under Section 504

- The right to challenge a school district's proposed action by coming to an impartial due process hearing.
- Upon the filing of a complaint with the district's Section 504 compliance officer, the district must conduct an impartial hearing. The regulations do not specify a timeframe nor do they define "impartial."
- The right to be represented by counsel throughout the impartial hearing process.
- The right to appeal the impartial hearing officer's decision to federal court.

Prior Written Notice

OCR has confirmed that a school district is required to provide a parent with notice of all actions or decisions related to the identification, evaluation and placement of a student under Section 504.

Procedural Safeguards Notice

- When must one be sent to the parents of a Section 504 student?
 - Whenever a school district is obligated to provide notice to a parent of an action or decision under Section 504, it must also provide notice to the parent of his right to (i) examine relevant records; (ii) an impartial hearing, with the opportunity to participate and representation by counsel; and (iii) a review procedure. This can be accomplished by sending the parent a procedural safeguards notice.
 - Each district's procedural safeguards notice should be consistent with its Section 504 policies and procedures.

Disciplining Section 504 Students

- OCR has repeatedly confirmed that consistent with the IDEA, whenever a Section 504 student is about to experience a disciplinary change in placement (i.e., a suspension greater than 10 consecutive school days or 10 non-consecutive school days in a school year that are related by a pattern), the district must determine whether the underlying conduct was a manifestation of the student's disability.

Section 504 Extends Beyond the Classroom

- Under 34 CFR 104.37, students with disabilities are entitled to reasonable accommodations if such accommodations will enable them to participate in school-related activities, including school-sponsored activities and field trips.
- Eligibility and accommodation decisions must be made on a case-by-case basis – based on the student's needs and the activity at issue.
- Students with disabilities may be excluded from activities only if they're unable to meet the essential requirements of the activity with or without reasonable accommodations.
 - Decisions to exclude based on a student's disability should be made by the CSE or Section 504 Team, as opposed to individual staff members or administrators.

QUESTIONS?



Thank you!