

SECTION ONE: Section 504 Compliance

This document addresses Section 504 of the Rehabilitation Act of 1973 and its application to students with disabilities. The purpose of this document is to help school districts/charter schools better understand their obligations and assist parents and stakeholders in the knowledge of Section 504. It is for informational purposes only and not intended as a substitute for legal advice. Reference to “student with a disability” in most cases refers to a student that is eligible for services under Section 504.

Legal Requirements

Section 504 of the Rehabilitation Act of 1973 Overview

Section 504 of the Rehabilitation Act of 1973, commonly known as Section 504, is a federal civil rights statute that prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance stating:

No otherwise qualified individual with disabilities in the United States... shall solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance (34 C.F.R. Part 104).

Section 504 applies to elementary and secondary schools, preschool, and adult education. Section 504 establishes a student's right to access education and all school-related activities.

Free Appropriate Public Education

Section 504 requires elementary and secondary schools to provide appropriate related services and aids to meet the individual needs of specific students. The statute requires that students with disabilities attending school districts/charter schools receive an education equivalent in quality and equally effective to the education of students without disabilities at no expense to the parent or guardian. This requirement is known as a free appropriate public education (FAPE).

An appropriate education means:

The provision of REGULAR or SPECIAL EDUCATION and related aids and services that are designed to meet the individual educational needs of a student with a disability as adequately as the needs of students without disabilities are met (34 C.F.R. Part 104.33).

An equally effective education does not mean equal results or identical achievement. It means:

To afford students with disabilities an EQUAL OPPORTUNITY to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to their needs (34 C.F.R. Part 104.4).

A free education means to provide needed services without cost to the student with a disability or their parents if there are no fees imposed on students without a disability or their parents to access what is being provided by the school. Charges may be imposed on a student with a disability only if it is equally imposed on a student without a disability.

Section 504 Eligibility

A student is considered eligible for protections under Section 504 if they meet the definition of a person with a disability:

- has a physical or mental impairment that substantially limits a major life activity;
- has a record of such an impairment; or
- is regarded as having such an impairment.

The definition of disability under Section 504 includes three individual points or prongs. At least one of the three prongs must be met to be eligible for protection against disability-based discrimination under Section 504. Meeting any of the three prongs affords protections and access to the Section 504 procedural safeguards.

Meeting the first prong might also provide the student with planned and implemented services and accommodations to achieve a free appropriate public education. Meeting the second or third prong does not ensure that the school will provide services and accommodations to the student. A depiction of this relationship can be found in Figure 1.

Even if a student with a disability does not need services, the student is protected from disability-based discrimination under Section 504's general nondiscrimination requirements (OCR Parent & Educator Resource Guide to Section 504, 2017).

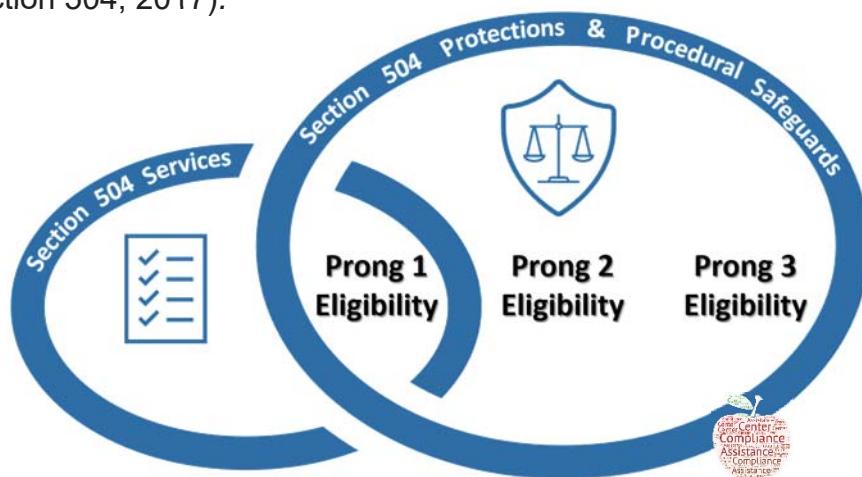


Figure 1

If a student is found to meet the definition of disability under the second or third prong of Section 504, the school district/charter school may evaluate the student to determine if the student meets the definition of disability under the first prong and if the student needs a plan.

Eligibility Under Prong 1

To meet the Section 504 definition of an individual with a disability under the first prong, a student must have a **physical and mental impairment** defined as follows:

ANY physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or ANY mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities (34 C.F.R. Part 104.3).

Not every physical or mental impairment will constitute a disability under Section 504. The physical or mental impairment must **substantially limit** a major life activity. When determining the existence of a substantial limitation, the team may:

- Compare the student being considered for protection to a student without a disability by considering if the student is substantially limited in performing a major life activity that the student without a disability of approximately the same age can perform.
- Consider the nature or severity of the impairment.
- Consider the impact of the impairment.
- Consider how long the impairment will last or is expected to last.

When determining the existence of an impairment or a substantial limitation of an impairment, **mitigating measures** cannot be considered. Mitigating measures may have a corrective or beneficial effect on the major life activity. If a mitigating measure is in place the team may consider:

- The limitation caused by the impairment if the support was not in place.
- The experience of the student before using the support.
- Evidence of the expected limitations of a particular disorder without the support.

A student must not be required to stop using a mitigating measure to be evaluated. Ordinary eyeglasses or eye contacts are not considered to be mitigating measures. Examples of mitigating measures include:

- Accommodations, aids, or services,
- Assistive devices or technology (e.g., cane, computer accessibility modifications, wheelchairs),
- Hearing aids and cochlear implants,

- Learned behavioral modifications,
- Low-vision devices (excluding ordinary eyeglasses or contact lenses),
- Medication,
- Oxygen therapy equipment, and
- Prosthetics.

Major life activities include without limitation breathing, caring for oneself, hearing, learning, performing manual tasks, seeing, speaking, walking, or working. The major life activity does not have to be related to learning to be eligible under Section 504.

A student no longer meeting the definition of disability under the first prong is no longer considered eligible for protections and services under Section 504. A depiction of the definition of the first prong can be found in Figure 2.

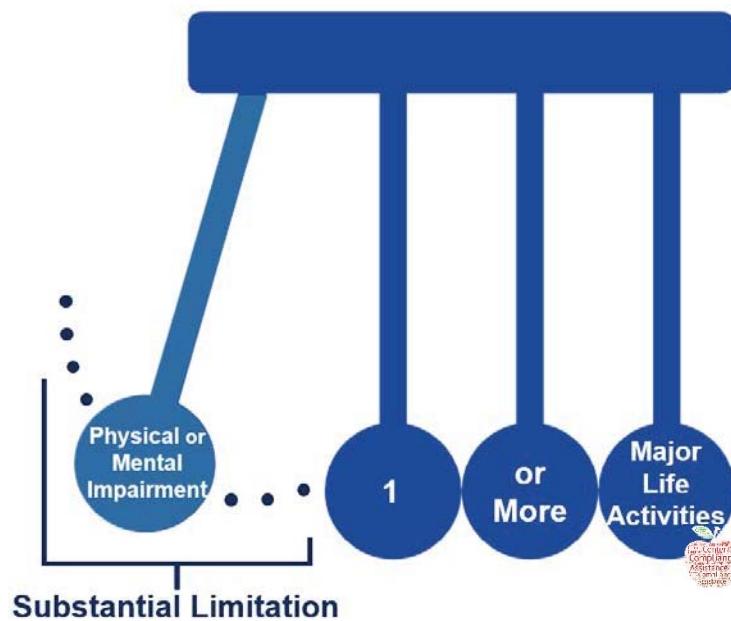


Figure 2

Eligibility Under Prong 2

To meet the Section 504 definition of an individual with a disability under the second prong, a student must have a “record of” an impairment by the school district/charter school. A “record of” an impairment means that the student in the past was considered to have had a physical or mental impairment that substantially limits a major life activity.

- This individual might have had the impairment in the past, but no longer has the condition.
- This individual might have been incorrectly determined as having had the impairment.

Frequently occurring examples of the first group are persons with histories of mental or emotional illness, heart disease, or cancer; of the second group,

persons who have been misclassified as having a learning disability (34 C.F.R. Subpart A).

Eligibility Under Prong 3

To meet the Section 504 definition of an individual with a disability under the third prong, a student must be “regarded as” having an impairment by the school district/charter school. Being “regarded as” having an impairment means that the student is regarded, treated by others, stereotyped, perceived, or looked at as having a physical or mental impairment that substantially limits a major life activity.

- This individual might have an impairment that does not substantially limit a major life activity but is treated by others as having such a limitation.
- This individual might have an impairment that substantially limits a major life activity only as a result of the attitudes of others.
- This individual might not have an impairment but is treated by individuals in the school as if they have a disability.

Transitory or minor impairments with an expected duration of lasting six months or less would not meet eligibility under the third prong, but the school district/charter school may still take action to aid the student. Transitory or minor impairments can still be substantially limiting and meet eligibility under the first and second prongs of the definition of disability under Section 504.

Section 504 Requirements to Identify and Locate

Section 504 requires school districts/charter schools to identify and locate every student within their jurisdiction that meets the definition of disability under Section 504. The duty to locate students extends to students not receiving a public education that resides in the boundaries of the institution. This responsibility includes students enrolled in private schools, students participating in home school, students living in hospitals or other institutions, and students that are homeless residing in the area jurisdiction.

A public elementary or secondary education program shall annually identify and locate every qualified student with a disability residing in the recipient's jurisdiction who is not receiving a public education (34 C.F.R. Part 104.32).

If a student is found to meet the definition of disability under the first prong of Section 504, but the student is not enrolled in the school district/charter school nor accessing its programs or activities, the district/charter is not required to provide a free appropriate public education (FAPE).

Notice of this Duty

K-12 institutions are required to notify students and their parents of the school district's/charter school's obligation to seek out students in their area that meet the definition of disability under Section 504.

A public elementary or secondary education program shall annually take appropriate steps to notify students with disabilities and their parents or guardians of the recipient's duty (34 C.F.R. Part 104.32).

The communication of the district's/charter's obligation should be done in the languages of the local school community. Public awareness activities concerning Section 504 may be combined with the activities required under the Individuals with Disabilities Education Act (IDEA) as long as requirements under both statutes are met and funds under the IDEA are not used in efforts to comply with Section 504.

This notice should direct anyone with questions regarding Section 504 to contact the district or charter's Section 504 Coordinator. The notice should include their name or title, office address, email address and telephone number.

The specific methods and activities that school districts/charter schools must engage in to provide notice of their duty to identify students with disabilities regarding Section 504 are not prescribed by the federal regulation. Example Section 504 "child-find" activities based on a targeted audience may be found in Figure 3. Activities may apply to varying audiences and should be chosen based on each school district's/charter school's local community.

Reaching out to parents and guardians:



- Include in the **Student Handbook** the Section 504 Notice of Nondiscrimination and portions of the district's/charter's Section 504 procedures.
- Inquire within the new student **registration/enrollment packet** if the parents suspect that the child might have a disability and need support.
- Make available at **school events** information regarding the support for students with disabilities (e.g., Open House, Parent Night, Meet the Teacher).
- Once every school year describe in a monthly **newsletter** the district's/charter's obligation to locate students that meet the definition of disability under Section 504.
- Email parents the Compliance Assistance Center Section 504: Access Protected (Parents and Guardians) **video**.
- Partner with the district's/charter's **Family Engagement Coordinator** and/or the **Home School Coordinator** to help in describing to families the school's responsibilities under Section 504.

Reaching out to current students:



- Inquire during counselor-facilitated course and **schedule meetings** if the student needs supports.
- **Post** alongside other school communication to students, the Section 504 Notice of Nondiscrimination

Reaching out to teachers, administrators, school nurses, school counselors, school-related service providers, etc.:



- Describe during the delivery of Section 504 **professional development** the district's/charter's expectations of staff to seek out students that might meet the definition of disability under Section 504.
- Email staff possible characteristics or **indicators that a disability** might be present and information on how impairments might be exhibited (e.g., ADD, Dyslexia, Sleep Disorder).
- Consider as a team when a student is found **ineligible** under the Individuals with Disabilities Education Act (IDEA) a referral under Section 504.
- Inquire during **teacher-team meetings** and **parent-teacher conferences** if there is suspicion that a student might have a disability and need support.
- Partner with the **school nurse** and **school counselor** in seeking students that might meet the definition of disability under Section 504.

Reaching out to private schools:



- Tag in the district's/charter's **social media** posts local private schools regarding Section 504.
- Include on the **webpage** the Section 504 Notice of Nondiscrimination and portions of the district's/charter's Section 504 procedures.

Reaching out to preschools and daycares:



- Provide a **brochure** to local preschools and daycares describing the district's/charter's obligation to locate students that meet the definition of disability under Section 504.

Reaching out to clinics and doctor's offices:



- Contact by **phone** or **email** local clinics and doctors' offices to describe the district's/charter's obligation to locate students that meet the definition of disability under Section 504 and briefly describe the district's/charter's process.
- Provide a **brochure** to local clinics and doctors' offices describing the district's/charter's Section 504 compliance requirements and its duty to provide students with disabilities access to what the school provides as compared to students without disabilities.

Reaching out communitywide:

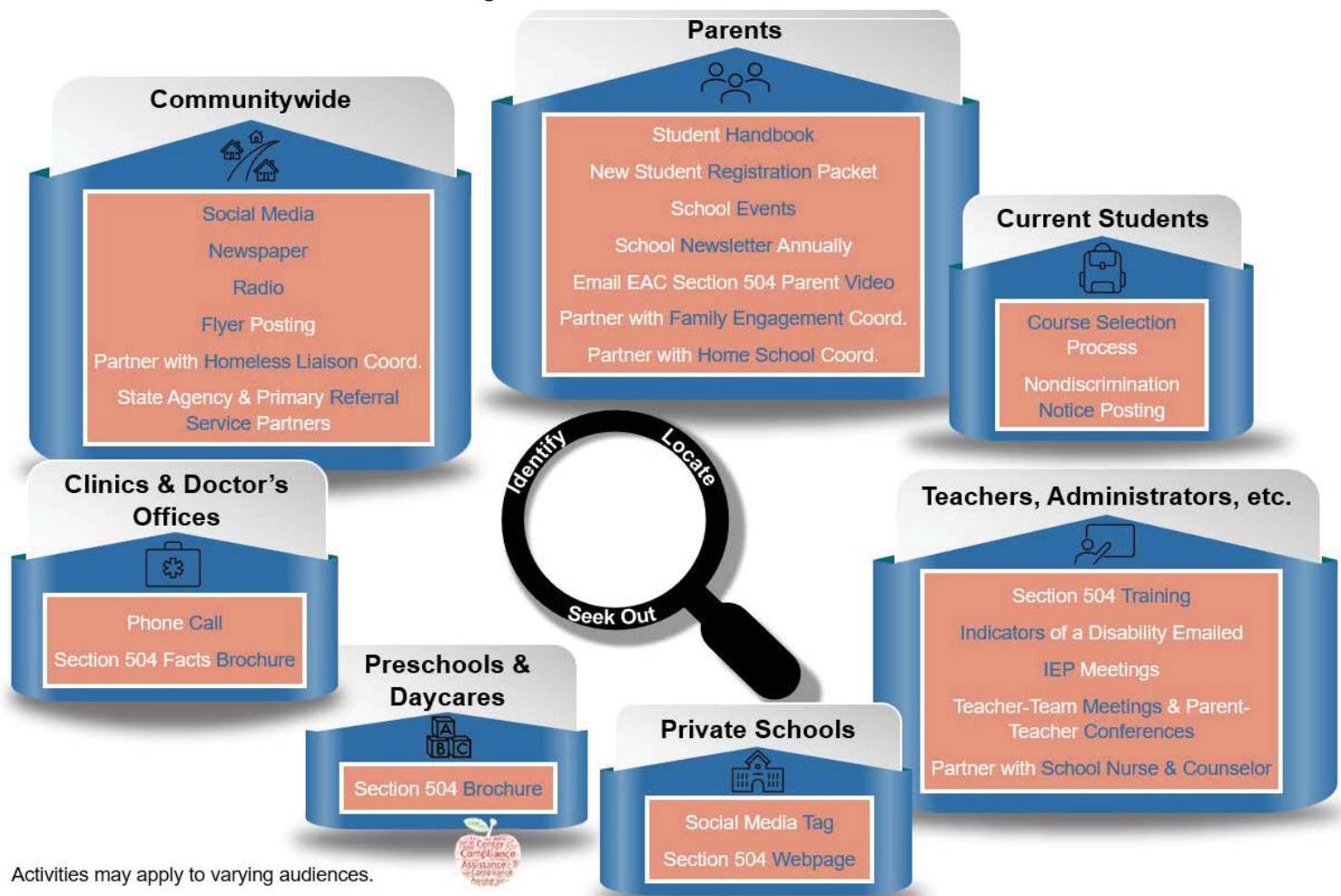


- Post on the district's/charter's **social media** platforms the Section 504 Notice of Nondiscrimination and its obligation to locate students that meet the definition of disability under Section 504.

- Post in local **newspapers** the district's/charter's Section 504 Notice of Nondiscrimination and its obligation to locate students that meet the definition of disability under Section 504.
- Communicate in local **radio** announcements that the district/charter does not discriminate on the basis of disability in violation of Section 504 and of its obligation to locate students that meet the definition of disability under Section 504.
- Post a **flyer in public spaces** such as the local community center, library, or shelter describing the district's/charter's obligation to locate students that meet the definition of disability under Section 504.
- Partner with the district's/charter's **Homeless Liaison Coordinator** to help in describing to families the school's responsibilities under Section 504.
- Partner with **local state agencies, primary referral service partners, and case managers** to help in describing to families the school's responsibilities under Section 504.

For assistance on a Section 504 notice of nondiscrimination see [SECTION THREE: Sample Forms \(e.g., Notification of Nondiscrimination\)](#).

Targeted Section 504 "Child-find" Activities



Section 504 Procedural Safeguards & Protections

Section 504 procedural safeguards are designed to protect the rights of eligible students with a disability and their parents. These safeguards provide families and school systems with mechanisms to prevent disability-based discrimination. Section 504 procedural safeguards include:

- Notice of this non-discrimination law and how it applies to the school district/charter school.
- Referral process for an evaluation when there is a suspicion that a student has a disability.
- Parental consent for the initial evaluation.
- Evaluation, determination of qualification, and placement made by a team based on information from a variety of sources - including assessments, attendance, behavior referrals, grades, teacher and parent observation, or a formal diagnosis (a formal diagnosis is not required).
- Periodic reevaluation – including before a significant change in the student's placement.
- Opportunity for students and parents to examine relevant records.
- A copy of these rights and protections provided to the parent and/or student as appropriate.
- Grievance procedure.
- Impartial hearing procedure with opportunity for representation by counsel.
- Review procedure of the impartial hearing.

Section 504 also provides protections for students with disabilities who are subjected to disciplinary removals from school or significant changes in placement due to behaviors that are a result of the student's disability.

An individual evaluation is required before any action is taken with respect either to the initial placement in a regular or special education program or to any subsequent significant change in that placement (34 C.F.R. Subpart D).

Regularly communicating Section 504's procedural safeguards and protections to the school community assists K-12 school systems in meeting the responsibility of providing a free appropriate public education. An annual professional development for school staff is encouraged by the Compliance Assistance Center (CAC) to remind individuals of Section 504's compliance requirements and the local school district's/charter school's Section 504 expectations and practices. For assistance in defining the roles and responsibilities of individuals within the school community see [SECTION TWO: Section 504 Implementation \(e.g., Process Roles & Responsibilities\)](#).

Written procedures regarding a school system's administration of Section 504 procedural safeguards are encouraged by the Compliance Assistance Center (CAC). The Office for Civil Rights (OCR) would consider it a violation of Section 504 if a school districts/charter school written Section 504 procedures were not followed.

Section 504 Enforcement

Section 504 is a civil rights law and therefore a responsibility of the comprehensive general education system. As such, superintendents and building leaders are responsible for the administration of Section 504 within school districts/charter schools.

School systems with fifteen (15) or more employees are required to designate an employee to ensure compliance with Section 504. This individual is known as the Section 504 Coordinator. For assistance on the responsibilities of the Section 504 Coordinator see [SECTION TWO: Section 504 Implementation \(e.g., Coordinator Responsibilities\)](#).

Each school district and charter school in Arkansas designates an Equity Assistance Coordinator (§ 6-27-1902) to ensure the alleviation of educational inequities and oversee the institution's compliance with regulations that concern the prevention of discriminatory treatment including Section 504.

The [Compliance Assistance Center \(CAC\)](#) of the Arkansas Division of Elementary and Secondary Education (DESE) provides technical assistance concerning Section 504 to Arkansas public school districts/charter schools so that they are aided in their efforts of ensuring that students meet or exceed educational milestones along pathways to graduate prepared for college, career, and community engagement. CAC monitors compliance through complaint investigations.

The [Office for Civil Rights \(OCR\)](#) of the U.S. Department of Education maintains the ultimate responsibility for enforcing Section 504 of the Rehabilitation Act of 1973. OCR monitors compliance through complaint investigations and compliance reviews.

Title II of the Americans with Disabilities Act of 1990 Comparison

Additionally, public school systems are government entities covered by [Title II of the Americans with Disabilities Act of 1990](#) (ADA). The ADA extends the requirement of Section 504 prohibiting discrimination on the basis of disability in employment (Title I), state and local governments (Title II), and places of public accommodation and commercial facilities (Title III). The [ADA Amendments Act of 2008 \(P.L. 110-325\)](#) provided additional examples of general activities that are "major life activities" in a non-exhaustive list including bending, communicating, concentrating, eating, lifting, reading, sleeping, standing, and thinking. The [U.S. Department of Justice \(DOJ\)](#) and OCR maintain the responsibility of enforcing Title II of the ADA in schools.

Generally, Title II of the ADA and Section 504 nondiscrimination standards are the same. Violations under Section 504 generally also constitute violations of Title II of the ADA. A description of the protections under Title II of the ADA largely does not provide additional guidance beyond Section 504 to public schools that are subject to both laws.

Where Title II of the ADA exceeds requirements under Section 504, school districts/charter schools must also comply with the Title II requirements.

A comparison of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 can be found in Chart 1.

Comparison of Section 504 (RA) & Title II (ADA)		
	Section 504 of the Rehabilitation Act	Title II of the ADA
Purpose	Common assumption that all people with disabilities can work. Civil rights law to prohibit discrimination on the basis of disability in programs and activities, public & private that receive federal financial assistance.	Civil rights law to prohibit discrimination solely on the basis of disability in employment, public services, & accommodations that receive state and local government funds (Title II).
Who is protected?	Any person whom: <ul style="list-style-type: none"> (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. 	Any person with a disability whom: <ul style="list-style-type: none"> (1) has a physical or mental impairment that substantially limits one or more life activities, or (2) has a record of such impairment, or (3) is regarded as having such an impairment.
Free & Appropriate Public Education	Protections include an appropriate education comparable in quality to that provided to students without disabilities at no expense to the parent/guardian.	Protections apply to nonsectarian private schools, but not to private schools controlled by a religious organization.
Funding	No Section 504 funds. State & local jurisdictions have responsibility.	No ADA funds. Limited tax credits may be available for removing architectural or transportation barriers.
Procedural Safeguards	Section 504 requires notice to parents regarding identification, evaluation, and/or placements. Written notice is recommended.	The ADA requires no specific procedural safeguards related to special education. The ADA details complaint procedures and consequences for noncompliance.
Evaluation & Placement Procedures	Section 504 requires consent for initial evaluation. That evaluation must be done by persons knowledgeable of the student, consider a variety of sources/data, & documented. Diagnosis is not required. Students must be educated with non-disabled peers to the maximum extent appropriate.	The ADA required no specific evaluation & placement procedures. The ADA details reasonable accommodations for eligible activities & settings.

Chart 1

Individuals with Disabilities Education Act (IDEA) Comparison

Public school systems to receive federal funds must also comply with the [Individuals with Disabilities Education Act](#) (IDEA). In 1975 the IDEA guaranteed eligible students with disabilities entitlement to free appropriate public education. The [U.S. Department of Education, Office of Special Education](#) maintains the ultimate responsibility for enforcing the IDEA.

Section 504 and the IDEA both concern the rights of students and their parents, an evaluation (and reevaluation), and an individualized plan. Important differences between the two federal laws as well as their relationship with each other include:

- Section 504 is a civil rights law that protects the rights of individuals with disabilities - not only students with disabilities - in any institution that receives federal assistance; and

- The IDEA provides federal aid to states in their efforts to ensure adequate and appropriate educational services for students with disabilities.
- The protections provided by Section 504 are also largely afforded to students being served under the IDEA. Generally, students served under IDEA gain access to the anti-discrimination procedural safeguards under Section 504.

A depiction of the relationship between Section 504, Title II of the ADA, the IDEA, and the supports provided to other students within a school can be found in Figure 4.

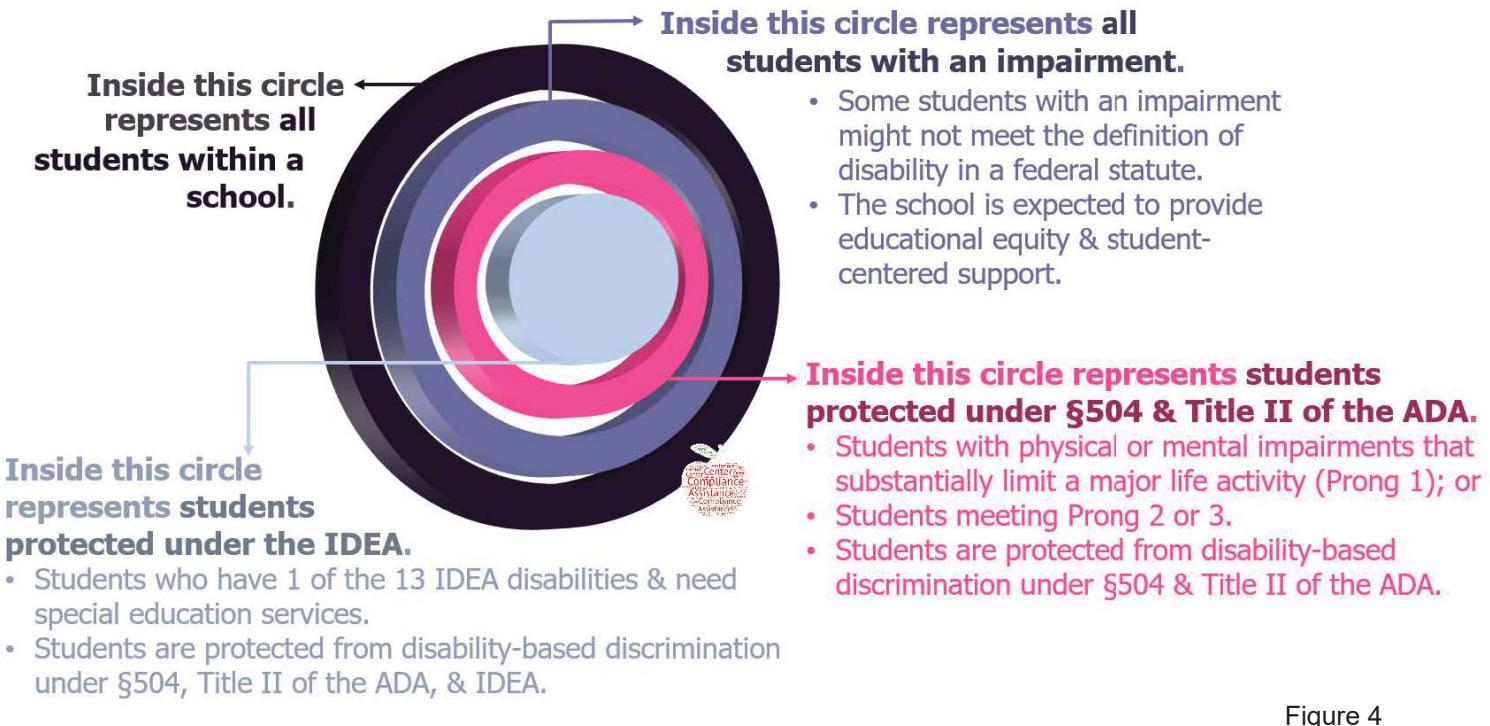


Figure 4

Due Process

It is the right of a student, parent, or stakeholder to informally or formally submit their Section 504 concern for review by the school district/charter school. The review and investigation of the submitted concern must be uniform and guided by a structured process.

Local Complaint Informal Resolution Practices

School Administrator Support in Section 504 Concerns

When Section 504 concerns are resolved collaboratively through informal processes the solution is often advantageous in appropriately supporting the student. To aid in

informal resolution practices, the district/charter school leadership team should support the principal and vice-principal's awareness of the following:

- District and campus-level Section 504 coordinators.
- School District/Charter School Grievance Policy and procedures.
- How to determine if an individual is making a complaint and how to seek clarification at early stages.
- Ways to listen and collaborate to achieve resolution of concerns at the lowest level in the chain of command – such as:

LISTEN

- Encourage the individual to communicate their concern. Make it clear that you have heard the concern using confirmatory phrases. Write down specifics of the issue.
- Remain calm and let the individual know you value that they are coming to you.
- Determine the practice or action the individual believes violates Section 504, the steps they have already taken to resolve the matter, and the corrective action desired.
- Provide a time to contact the individual with your progress towards reviewing and resolving the issue.
- Determine the immediate need of the individual and if you need to respond straight away.

COLLABORATE

- Advise their direct supervisor or Section 504 Coordinator of the measures taken to achieve resolution and describe the support needed in reviewing and resolving the concern.
- Consider a variety of ways to address the root cause and work with their direct supervisor, Section 504 coordinator, and the student's Section 504 team members to determine the most effective and efficient tool(s) to use.

Local Grievance Procedures

Section 504 concerns may be addressed via a formal resolution process. Parties may submit Section 504 grievance complaints for alleged violations. The school system is required to adopt a grievance procedure for students, parents, and employees. A separate procedure for students and employees is not necessary.

A school system may adopt a single grievance procedure to satisfy its obligation under Title IX, Section 504, the ADA, and the Age Discrimination Act. One procedure can be written to cover multiple grievance discrimination policies just as long as the procedure meets the standards required by each necessary regulation.

An important feature of the grievance procedure is that it is effective within the school system's setting. There is no specific procedural format or grievance content, but to

satisfy due process standards, the Office for Civil Rights (OCR) advises that a complaint grievance procedure include:

- A description of where to file complaints.
- Alternative methods of filing complaints such as verbally or in writing.
- Procedures for equitable resolution of complaints.
- A description of the steps the school district/charter school will take to ensure an adequate, comprehensive, impartial, and objective investigation.
- Opportunities to present evidence and witnesses.
- Prompt and reasonable time frames.
- Notification of findings and investigation outcomes provided to all parties.
- Procedures to appeal and identification of the person responsible for reconsidering complaints.
- An assurance that the school district/charter school will take steps to prevent discrimination on the basis of disability from recurring and to correct its efforts.

School systems are obligated to disseminate grievance policies and procedures. The means by and the degree to which they are disseminated are at the discretion of the school district/charter school. It is perceived by some that making grievance procedures widely available leads to an increase in frivolous complaints, but when combined with a well-constructed written procedure, published grievance policies reinforce the concept of prohibiting disability-based discrimination and the correction of missteps in compliance. Making grievance procedures available on an “as requested” basis will not satisfy the requirements of federal laws.

Complaint & Grievance Investigation Practices

Investigations are conducted when allegations arise of non-compliance with Section 504. Investigations need to be comprehensive, in-depth, fact-finding endeavors to obtain all the information involving the allegation. The process must adhere to the school system’s Section 504 complaint investigation and notification procedures.

Facts are used to determine if the allegations are true and may involve analyzing documents and evidence and/or conducting interviews. Information might be gathered from appropriate individuals including the Campus/District-level Section 504 Coordinator or the Section 504 Team to gain insight into the team’s consideration of the student’s educational needs in order to receive a comparable education to students without disabilities. The investigator determines the adherence to Section 504 policies and procedures concerning the grievance and document their investigation.

The complainant’s allegations are either substantiated or unsubstantiated. The investigation is finalized when it is determined if or to what degree a Section 504 violation occurred.

Individuals that investigate Section 504 grievances should be impartial and have knowledge of Section 504.

Complaint & Grievance Resolution Practices

When resolving a submitted grievance:

- Consider all possible resolutions and unintended outcomes.
- Consider needed adjustments to the school's Section 504 practices and acknowledge any errors made.
- Convey to the complainant any adjustments in practices, resolution options, and the decision.
- If the complainant is unsatisfied with the outcome, remind them of the procedures available to them as described in the School District Section 504 Grievance Policy.

For examples concerning the Section 504 grievance procedure see [SECTION THREE: Section 504 Resources \(e.g., Sample Complaint & Grievance Procedure\)](#).

Local Impartial Hearing Procedures

A Section 504 impartial hearing may be called at the request of the school district/charter school or a parent. School districts/charter schools are required to provide an impartial hearing when requested to resolve issues concerning decisions and compliance with Section 504. Although the Compliance Assistance Center (CAC) at the Arkansas Division of Elementary and Secondary Education (DESE) does not facilitate impartial hearings pertaining to Section 504, this section has been developed to aid K-12 school systems in their compliance.

School District and Charter School Response when an Impartial Hearing Request is Filed

- Ensure that all communication to the parent is in the appropriate native language or mode of communication.
- Provide the parent with a copy of their rights under Section 504.
- Inform the parent of any low-cost legal services and other relevant services available in the local area.
- Select an impartial hearing officer.
- Notify the parent of the following:
 - Time, location, and purpose of the hearings.
 - A statement of the issues involved.
 - The particular sections of the statute(s) and rule(s) involved.
 - The parent's right to have an attorney present and representation by counsel at their own expense.
 - The name of the impartial hearing officer who will conduct the hearing
 - The hearing officer's contact information.

Impartial Hearing Officer: Identification

The impartial hearing officer may be either an attorney or an individual with knowledge of the Section 504 law. The impartial hearing officer must not be employed by nor representing the school district/charter school. The impartial hearing officer may review policies and decisions approved by school district/charter school employees. This could present conflicts of interest (or perceptions of conflicts of interest) impacting the ability to conclude that a local policy or decision conflicts with Section 504.

The district/charter school should identify an individual (e.g., Section 504 Coordinator) to maintain a list of persons who serve as hearing officers. This list should include a statement regarding the backgrounds of each of the hearing officers and should be made available upon request. The school district/charter school may utilize any process for obtaining a Section 504 impartial hearing officer as long as it is consistent with its internal policies for obtaining professional services. This might include seeking proposals from law firms or other Section 504 experts. The Arkansas DESE does not maintain a list of available Section 504 impartial hearing officers.

Impartial Hearing Officer: Roles & Duties

The hearing should be presided over and decided by the impartial hearing officer. The hearing officer has the power to administer an oath to anyone who will testify at the hearing. The hearing officer may define the issues to be considered and regulate the presentation of the evidence. The officer may issue subpoenas upon request of any party and may examine witnesses. They may assist the parties in making a full statement of the facts in order to bring out the information necessary to decide the issue. The hearing officer may rule on any requests or motions that are made before or during the impartial hearing.

Purpose of a Prehearing Conference

A prehearing conference is not necessarily required but may benefit the hearing proceedings. During a prehearing conference, the hearing officer has the opportunity to discuss the hearing. Discussion items might include:

- established hearing procedures,
- applicable burden(s) of proof,
- issues on which the hearing will be held,
- facts not in dispute,
- rule on outstanding motions or the admissibility of exhibits,
- document authenticity,
- determination of whether the parents have been provided the opportunity to inspect their child's education records,
- number of witnesses, witness order, and the expected length of direct and cross-examination for each witness,
- determination of whether the child will be present,

- arrangements for telephone testimony, and
- arrangements for participants that require special accommodations or assistive technology.

At the discretion of the hearing officer, the prehearing conference may be conducted by telephone.

After the prehearing conference, the hearing officer should prepare a summary of the matters discussed.

Requests for Information

Each party should attempt in good faith to meet requests for documents, releases, or information, as soon as practicable. When there is a dispute between parties concerning a request for documents, any party may file a motion with the hearing officer to compel the release of the requested information.

Impartial Hearing Procedures

BURDEN OF PROOF: It is the responsibility of the party that requested the hearing to prove the facts of their issue based on evidence. These facts must be related to the relevant issue being considered.

ORDER OF PROOF: The party that requested the hearing should present its evidence first unless otherwise agreed to by the parties. All parties should have the opportunity to present testimony and evidence, cross-examine, and make opening and closing statements.

All hearings should be electronically recorded by the hearing officer or their designee. Hearing files and the official record of the hearing should be maintained by the school district/charter school.

For an example impartial hearing agenda see [SECTION THREE: Section 504 Resources \(e.g., Sample Impartial Hearing Agenda\).](#)

Hearing Officer's Decision

A copy of the hearing officer's decision should be delivered to the school district/charter school and the parent at the completion of the hearing within the designated time frame described in the hearing procedures. The decision of the hearing officer is binding on all parties involved and should be implemented immediately unless a delay is agreed to by both parties in writing or an appeal to a federal court is filed.

Issues may be dismissed with or without prejudice. Dismissal with prejudice signifies that the issues raised in the hearing request are closed and cannot be reopened in subsequent requests. Dismissal without prejudice indicates that the same issue may be raised at a later date by filing a new request for a hearing.

Advice for Hearing Participants

Suggestions for Section 504 impartial hearing participants may be found in Figure 5.



Figure 5

Retaliation

Retaliation is prohibited. Districts, charter schools, and individuals are prohibited from intimidating, threatening, coercing, or discriminating against any individual to interfere with any right or privilege secured by Section 504.

No recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by the regulations or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceedings or hearing held in connection with a complaint (34 CFR §100.7).

Office for Civil Rights (OCR) Complaints

Individuals may file complaints with the Office for Civil Rights (OCR) if it is believed that there has been a violation of any provision or regulation of Section 504. Although OCR addresses Section 504 complaints separately and independently of the local hearing process, typically they may not investigate the same allegations that are pending in a hearing. Information regarding the OCR complaint process may be obtained at <https://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>. The contact information of the OCR enforcement office that serves Arkansas is as follows:

Office for Civil Rights, Kansas City Office
U.S. Department of Education
One Petticoat Lane
1010 Walnut Street, Suite 320
Kansas City, Missouri 75201-64106
Fax: 816-268-0599
Email: OCR.KansasCity@ed.gov

Compliance Assistance Center (CAC) Complaints

Compliance Assistance Center (CAC) Section 504 Role:

A primary objective of the Compliance Assistance Center (CAC) complaint process is to resolve complaint allegation(s) promptly and appropriately to assist school districts and charter schools in achieving the vision and mission of the Arkansas Division of Elementary and Secondary Education (DESE). The CAC provides technical assistance to Arkansas public schools, districts, and charter schools in the area of Section 504 to enable them to effectively understand their responsibilities of providing equitable educational opportunities to all students, implement policies and procedures that are non-discriminatory, and document compliance.

Compliance Assistance Center (CAC) Section 504 Complaint Process:

A CAC Section 504 complaint is a written statement alleging that Section 504 of the Rehabilitation Act of 1973 has been misinterpreted or violated and requesting the CAC investigate and provide technical assistance. Such requests may be written on lined paper, typed in a document or within the form located at

<https://dese.ade.arkansas.gov/Offices/legal/compliance-assistance-center>.

Complainants must provide their contact information. Complaints may be filed by email, postal mail, fax, or in-person using the following information:

Compliance Assistance Center
Arkansas Division of Elementary and Secondary Education
4 Capitol Mall, Box 25
Little Rock, AR 72201
Fax: 501-682-7288
Email: ADE.EquityAssistance@ADE.Arkansas.gov

Upon receipt, the CAC determines whether the submitted correspondence meets the requirements of a formal complaint. When a written complaint is received alleging that a public school, district, or charter school violates Section 504, the procedures below apply:

1. Determine if the complaint is sufficient.
2. Assign a case number and establish a complaint file.
3. Assign CAC staff to the complaint.
4. Acknowledge the complaint by sending the complainant a written letter and requesting permission to obtain information about the student.
5. Provide a courtesy call to the superintendent relaying the submission of a complaint to the CAC.

6. Perform investigation of complaint allegation(s).
7. Determine whether the evidence was found to support a conclusion of compliance.
8. Provide written notification to the complainant and school district/charter school regarding results at the conclusion of the investigation.
9. Written notification is carbon-copied/forwarded to necessary Arkansas Department of Education parties or the Office for Civil Rights (OCR) when appropriate.
10. Records retention of a written complaint, complaint file log, correspondence letters and attachments, and all evidence used in the investigation are maintained in the DESE electronic server for five (5) years from the date of the written decision.

A complaint may be resolved at any time before the conclusion of the investigation, by the complainant withdrawing the allegation(s) in writing.

If the complainant elects to file the same complaint with any other entity while the CAC is investigating, the CAC will cease to investigate the complaint. In addition, the CAC will not investigate complaints that the Office for Civil Rights (OCR) has previously resolved.