

Arkansas  
Proportionality

**5.9%**  
of students in  
district served  
under § 504

**8.9%**  
of OSS discipline  
provided to  
students served  
under § 504

**+3%**  
Representation Gap  
% Receiving OSS  
- % Receiving Services

Source: ADE Data Ctr. (SY 21-22)

\*"Depending on  
circumstances" =  
Individual case-by-  
case analysis required.

# Student Behavior & School Discipline

## Long-Term (LT) & Short-Term (ST) Removals, Expulsions

LT or ST Out-of-School Suspensions (OSS) & Expulsions are more than 10 consecutive (or non-consecutive) total school days removed from school.

Schedule manifestation determination reevaluation (MDR) meetings ASAP when there is a proposed discipline removal that will result in more than 10 days of out of school.

- Take into account the # of short-term removals in that school year when determining how much time is available to hold an MDR.
- MDR is required before day 11. § 504 team must assess if misconduct is caused by, substantially, or directly related to the disability & if the § 504 plan was adequate & implemented (OCR, 10).

If behavior is disability-based: The student cannot be given OSS for more than 10 days.

- The § 504 team's data-based review assesses if plan/setting are appropriate & revises as needed.
- Students unable to be supported in the general education setting with implemented supports, may need a more restrictive environment. The team should plan when the student can return to the least restrictive environment.
- The team may consider a referral for a special education evaluation.

If behavior is not disability-based: The proposed discipline consequence is permitted.

Even if prior MDRs have occurred an MDR is required for additional proposed suspensions if a student has already had 10 days of OSS in the school year.

§ 504 accommodations must be provided to students engaging in offered courses when they are expelled.

- Accommodations may differ from those when the student was not expelled.

## Out-of-School Suspension (OSS)

OSS 10 days or less (consecutively or school year total)

MDR is not required. Equitable for § 504 teams to review data (e.g., FBA [nature of behavior, function the behavior serves for student, triggers of the behavior, & its consequences]) & proactively support (e.g., BIP) misbehavior that is related to the disability.

## In-School Suspension (ISS)

§ 504 plans must be implemented in ISS.

There must be a timely method to distribute classwork.

- If removed more than 10 days & the student is not provided comparable educational services in ISS to those prior, an MDR may be required (depending on circumstances).
- Consider documenting (a) ISS staff awareness of accommodations & (b) plan implementation in ISS.

Repeated ISS assignment may indicate the § 504 plan is ineffective.

## Alt. Learning Envi. (ALE)

§ 504 plans must be implemented in the ALE.

- Unsuccessful ALE progress may indicate the plan is ineffective.



## Bus Suspension

If removed from the bus for more than 10 days in a school that offers transportation to all students & is not offering other transportation means, an MDR may be required (depending on circumstances).



## Informal Removal

The below practices in response to disability-based misconduct without a § 504 team assessing if additional/different services/data are needed may violate § 504 (depending on circumstances):

- Early pick-up – such as to prevent an OSS,
- Shortened school day schedule,
- Assignment to a virtual learning program, or
- Requiring a parent to attend class (OCR, 23).



## Risk Assessment & Safety Removal

For extraordinary situations where disability-based behavior is an immediate threat to the students' or others' safety, schools can refer to mental health crisis intervention specialists or law enforcement (OCR, 16).

- Mental health referrals are best made in coordination with parents.

Risk/threat assessors should coordinate with § 504 teams to ensure FAPE throughout process (OCR, 21).

- Teams should consider planning for safety measures that address the potential safety risk.

**Locate & Identify – “Child Find”**

Behavior challenges & ineffective discipline consequences can trigger suspicions of a disability requiring a § 504 evaluation (OCR, 7).

- Example behavior evaluation data: discipline history, observations, behavior triggers, frequency, & location, FBA, & threat assessment.

If there is reasonable suspicion of a behavior-based disability & the student is LT/ST removed, there may be a violation of § 504.

**Effectiveness & Monitoring**

§ 504 plans should (a) detail individualized behavior supports, (b) describe support implementation, & (c) how the team will assess if the supports are effective (OCR, 5).

- Example behavior monitoring: teacher, student, and parent observations & # of discipline referrals.

If supports are ineffective:

- Reconvene the § 504 team for a data-based review assessing if the supports/setting are appropriate & revise as needed.
  - May trigger suspicion of a disability under special education.

Teams that do not respond to worsening behavior problems within a reasonable amount of time may be allowing the denial of a FAPE (OCR, 10).

The § 504 team is the authority that reviews/decides plans/settings. This ensures impartiality & the reliance on objective data-based decision-making processes.

Prevent & eliminate bullying that can lead to a denial of FAPE &/or is based on disability.

- § 504 team determines if bullying prevention supports or compensatory supports are needed in the plan.
- Team should explicitly encourage that bullying be reported if it occurs.

**Title IX Sexual Harassment**

Title IX Coordinators should coordinate with § 504 Coordinators & teams to ensure FAPE – including the team's:

- Input on supportive measures/remedies &
- Determination of if the act is disability-based, when the student is found responsible for the act.

A school's definition of “consent” cannot violate a disability law.

*Rsrc Supporting Students with Disabilities & Avoiding the Discriminatory Use of Student Discipline under Section 504, Office for Civil Rights, 2022*

**Reasonable Modifications  
- Behavior**

Reasonable modifications of student discipline policies should occur to ensure a free and appropriate public education (FAPE) under § 504 (OCR, 24).

- Example modification: Not applying a disciplinary consequence for a disability-based behavior (e.g., not following bus rules), but identifying targeted behavior supports (e.g., specialized transportation).
- Modifications should be listed in the § 504 plan.

Behavioral assessments can lead to the development of Behavioral Intervention Plans (BIPs) that can be incorporated into § 504 plans (OCR, 10).

- BIPs should detail (a) acceptable replacement behaviors, (b) who will teach them to the student, (c) staff response to concerning behaviors, & (d) § 504 team's plan to monitor effectiveness (OCR, 11).
- Example BIP supports: counseling, school-based mental health services, physical activity, Behavior Coach assigned, “Cool down” protocol, de-escalation strategies, & parent contact.

Unwritten behavior supports may be inconsistent & ineffective.

**Illegal Drug & Alcohol Use**

Drug or alcohol offenses at school by “current” users do not require the right to an MDR nor a § 504 impartial hearing (OCR, 11).

- § 504 teams must determine if there is “current” use based on evidence.

Possession of drugs or alcohol alone does not forfeit § 504 rights (e.g., MDR).

**School Resource Officer (SRO)**

School nondiscrimination duties apply to everyone with whom the school has a contractual or other arrangement.

Administrators should (a) minimize SRO involvement when no crime is involved, (b) inform SROs of students with behavior supports, (c) implement § 504 plans when SROs are involved, & (d) ensure that SROs are trained on de-escalation strategies (OCR, 26).

**Due Process Rights**

Provide parents notice of a proposed disciplinary removal (OCR, 13).

Make parents aware of the school's § 504 Grievance Procedure, Impartial Hearing Procedure & hearing review procedure.

Make parents aware of the school's general Discipline Due Process procedures.