

Introduction: Section 504

- Section 504 prohibits discrimination on the basis of disability in programs and activities that receive Federal financial assistance from ED.
- Section 504 applies to Local Educational Agencies (LEAs) that receive federal financial assistance (FFA). This includes traditional LEAs with charter schools and charter school LEAs.
- OCR also enforces Title II of the Americans with Disabilities Act and the Title II regulations, which prohibit discrimination on the basis of disability by State or local public entities, including LEAs, SEAs, and public charter schools, regardless of whether they receive Federal funds.

Section 504: Overview

- Charter school students with disabilities (and those seeking to attend) have the same Section 504 rights as other public school students with disabilities in elementary and secondary education.
- OCR's FAQ on the rights of students with disabilities in public charter schools under Section 504 does not establish new requirements; rather it explains existing legal requirements in the context of public charter schools.

Section 504: Public Charter School Students with Disabilities Protected

- Section 504 protects all *qualified students with disabilities* in charter schools.
- Section 504 defines *disability* and *qualified*.

Section 504: Nondiscrimination and Equal Opportunity, Generally

- Section 504 prohibits treating qualified persons with disabilities differently than individuals without disabilities on the basis of disability unless the different treatment is necessary to provide the person with a disability with aid, benefits, or services that are as effective as those provided to others.
- Section 504 also prohibits criteria, policies, practices, and procedures that are neutral in language and evenhandedly implemented but have the effect of discriminating against students on the basis of disability.

Section 504: Recruitment

- Section 504 requires charter schools to conduct any recruitment activities, and to provide the opportunity to apply to a charter school, in a nondiscriminatory manner, including:
 - Content of recruitment materials; and
 - Recruitment activities and application materials.

Section 504: Admissions and Enrollment, Generally

- Prohibitions against disability discrimination apply to all aspects of application, admission, and enrollment-related activities.
- Requirements related to admissions procedures are separate from requirements related to Section 504 free appropriate public education (FAPE) requirements for placements.
- Section 504 also prohibits disability discrimination in charter school disenrollment criteria, policies, practices, and procedures.

Section 504: Admission and Enrollment, Criteria and Policies

- **Section 504 prohibitions include :**
 - Admissions policies or criteria that explicitly exclude students on the basis of disability;
 - Admissions practices that exclude students on the basis of disability;
 - Admissions policies or practices that exclude any student because the student needs special education or related aids or services to ensure a FAPE;
 - Admissions criteria, policies, practices, and procedures neutral in language and evenhandedly implemented with respect to students with and without disabilities, but that have the effect of discriminating against students on the basis of disability.

Section 504: Admissions and Enrollment, Criteria and Policies (continued)

- Section 504 requirements include an obligation to make reasonable modifications of admission criteria, policies, practices, and procedures of general applicability when necessary to avoid disability discrimination, subject to the fundamental alteration limitation.
 - For example, Section 504 prohibits an admission policy or practice that excludes any student who needs a reasonable modification, for example, to participate in interscholastic athletics.

Section 504: Questions about Prospective Student’s Disability Generally Prohibited During the Application Process

- During the application and admissions process, a charter school generally may not ask a prospective student if he or she has a disability.
- Limited exceptions:
 - Remedial action after an OCR finding of disability discrimination;
 - Voluntary action to overcome the effects or conditions that resulted in limited participation in the recipient’s program by qualified persons with disabilities; or,
 - A charter school, chartered to serve the educational needs of students with a particular disability, may ask prospective students if they have that specific disability.

Section 504: Questions about Disability After Enrollment

- When a student with a disability is admitted to and enrolls in a charter school, the student is entitled to FAPE under Section 504. After enrollment, a charter school may ask if a student has a disability.

Section 504: *Counseling Out* on the Basis of Disability Prohibited

- Section 504 prohibits:
 - *Counseling out*, i.e, to try to influence a prospective student with a disability not to apply to or enroll in a charter school, because the student has a disability;
 - Counseling out to influence an enrolled student to transfer to another school because the student has a disability.
- A decision about placement for a particular student with a disability, consistent with Section 504 FAPE requirements, is distinguishable from counseling out.

Section 504: Right to FAPE

- The right of a charter school student with a disability to FAPE under Section 504 is the same as the right of a student with a disability enrolled in a traditional public elementary or secondary school in a traditional LEA.
- The provision of FAPE under Section 504 includes requirements to (1) provide a student with a disability regular or special education and related aids and services that are designed to meet the student's individual educational needs as adequately as the needs of students without disabilities are met, and (2) comply with Section 504 requirements pertaining to evaluation and placement, educational setting, and procedural safeguards.

Section 504: FAPE Evaluation

- Under Section 504, if a charter school student needs, or the recipient has reason to believe the student needs, special education or related aids or services because of a disability, the recipient must conduct an evaluation.
- An evaluation is required prior to an initial placement of the student and prior to any subsequent significant change in placement.

Section 504: FAP E Educational Setting and Placement

- Educational placement is an individualized decision about what educational and related aids and services a student with a disability needs. Decisions must be made by a group of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.
- Charter school students with disabilities must be educated with students without disabilities to the maximum extent appropriate to the needs of the student with a disability.
- A student with a disability is entitled to be placed in the charter school regular educational environment unless the recipient demonstrates that education of that student cannot be achieved satisfactorily, even with the use of supplementary services, in the charter school's regular educational environment.

Section 504: FAPE Procedural Safeguards

- Under Section 504, recipients are required to develop and implement a system of procedural safeguards to address FAPE concerns specifically, such as the identification, evaluation, and educational placement of students with disabilities.
- Procedural safeguards include notice; an opportunity for records review by parents or guardians; an impartial due process hearing, with an opportunity for participation by the student's parents or guardian and representation by counsel; and a review procedure.

Section 504: Nonacademic and Extracurricular Services and Activities

- Section 504 requires nondiscrimination and equal opportunity for charter school students in nonacademic and extracurricular services and activities.
- Examples of such services and activities include counseling services, health services, school clubs, and interscholastic athletics.

Section 504: Accessibility of Charter School Programs and Facilities

- Recipients are required to ensure that students and others with disabilities, including parents, are not denied access to the school's programs or activities because of inaccessible facilities, including academic buildings, walkways, restrooms, athletic facilities, and parking spaces.
- The specific requirements recipients must meet to ensure that programs and activities are accessible depends on the date a building was built or altered.
- Regardless of when a charter school's facilities were built or altered, the recipient must ensure that qualified persons with disabilities are not excluded from or denied participation in the recipient's program or activity because the facility is inaccessible to or unusable by persons with disabilities.

Section 504 and IDEA: Resources for More Information

- Joint DCL, Dec. 28, 2016, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-charter-school.pdf>;
- OCR FAQ, Dec. 28, 2016, <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf> (includes information about how to file a complaint of discrimination and contact information for questions);
- OSERS FAQ, Dec. 28, 2016, <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/faq-idea-charter-school.pdf> (includes contact information for questions);
- Joint *Know Your Rights: Students with Disabilities in Charter Schools*, Dec. 28, 2016, <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-charter-school.pdf> (includes information about how to file a complaint of discrimination and contact information for questions).

Section 504 and IDEA: Resources for More Information
(continued)

- Fiscal information on IDEA funds and charter schools, <https://osep.grads360.org/#program/idea-funds-and-charter-schools>
- For assistance related to civil rights, you may contact the OCR headquarters office in Washington D.C. or the OCR enforcement office serving your state or territory.
- Contact information available at: wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm, or by phone at 1-800-421-3482; TDD 1-800-877-8339.