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December 5, 2022

Submitted via [Section504@ed.gov](mailto:Section504@ed.gov)

The Honorable Seth Galanter  
Deputy Assistant Secretary for Civil Rights  
U.S. Department of Education  
Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

**Proposed amendments to the Department of Education's regulations implementing  
Section 504 of the Rehabilitation Act of 1973**

Dear Deputy Assistant Secretary Galanter,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 29 undersigned organizations, we write in response to the U.S. Department of Education's announcement to propose amendments to the department's regulations implementing Section 504 of the Rehabilitation Act of 1973.

The U.S. Department of Education's Office for Civil Rights (OCR) has a unique responsibility to enforce core nondiscrimination statutes in schools. These statutes, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act (ADA) of 1990, and the Age Discrimination Act of 1975, prohibit discrimination in schools on the bases of race, color, national origin (including language status), sex (including sexual orientation, gender identity, intersex status, and pregnancy or parenting status), disability, and age. Together, these statutes also prohibit intersectional discrimination in schools for people who experience discrimination, on one or more bases, at the intersection of these identities. Congress passed these laws in response to the widespread denial of equal protection and equal opportunity by states, districts, and schools. Although considerable progress has been made in the decades since these laws were passed, they continue to serve a vital function in the face of ongoing discrimination.

We, the civil and human rights community, support the full inclusion and protection of people, including children, with disabilities. Students with disabilities vary from one another in a multitude of ways, although all students with disabilities are protected from discrimination under Section 504 and the ADA. As organizations that care deeply about ending disability-based discrimination and ensuring equal educational opportunities, we

support updated Section 504 regulations that protect children with disabilities from discrimination. We firmly believe that disability rights are civil rights.

In response to OCR's announcement to propose amendments to the department's regulations implementing Section 504 of the Rehabilitation Act of 1973, and on behalf of the civil and human rights community, we offer the following recommendations:

### **Collect and report data annually through the Civil Rights Data Collection**

The department, educators, families, and advocates need access to regular, timely data in order to address issues and to intervene quickly so that no children lose access to educational opportunities, including the accurate data reporting and collection of students identified as eligible under Section 504. The Center for Civil Rights Remedies released an analysis of the 2017-18 Civil Rights Data Collection (CRDC), which revealed that thousands of large school districts failed to identify any 504-only eligible students.<sup>1</sup> Students with disabilities identified as Individuals with Disabilities Education Act (IDEA)-eligible experienced glaring disparities in rates of disciplinary exclusion, referrals to law enforcement, and chronic absenteeism, especially Black and Brown students with disabilities.<sup>2</sup> Relying on limited CRDC data collected biennially is clearly insufficient to ensure effective compliance with our civil rights laws. By requiring school districts to collect and report annual data, OCR can pursue increased compliance while disseminating oversight responsibility among parents and advocates. The timeliness of the reporting would provide OCR the time needed to course-correct the incomplete and inaccurate data that often exist in CRDC data reports. OCR should consider interventions to address noncompliance with CRDC through the management (e.g., ineligibility for competitive funds or withholding of grant renewals) of grant funds administered by the department.

### **Include stronger language regarding the Child Find obligation of districts and schools to identify all potentially eligible children**

The Child Find obligation described in the current 504 regulation lacks the level of specificity required to ensure the rights of qualifying students with disabilities. Unlike federal regulations promulgated under the IDEA, current regulations under Section 504 do not delineate what it means to “undertake to identify and locate” students and what constitutes “appropriate steps” to notify and inform parents. This lack of clarity has created confusion about school and district responsibilities, making an already low bar easier to surpass. Data from the CRDC indicate a serious lack of compliance with Child Find. The current 504 regulatory language is too cursory to provide sufficient information to families, students, schools, and districts of the requirements for identification/Child Find under Section 504.<sup>3</sup> In addition, this language could be interpreted to mean that a school or district only has to identify and locate potentially eligible

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<sup>1</sup> Losen, D. J., Martinez, P., & Rim Shin, G. (2021). *Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies*. UCLA: The Civil Rights Project / Proyecto Derechos Civiles. Retrieved from <https://escholarship.org/uc/item/2pw440h5>

<sup>2</sup> *Id.*

<sup>3</sup> Code of Federal Regulations Title 45 - Public Welfare, PART 84—Nondiscrimination on the basis of handicap in programs or activities receiving federal financial assistance. “A recipient that operates a public elementary or secondary education program or activity shall annually: (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.” <https://www.govinfo.gov/content/pkg/CFR-2017-title45-vol1/xml/CFR-2017-title45-vol1-part84.xml>

students or notify students with disabilities and their parents of their duty to do so, only once a year. To address this problem, the regulations must contain stronger language regarding the obligation of districts and schools to identify all potentially eligible children. Information about Section 504 and how to ask for 504 services must be shared in multiple ways with parents and on an ongoing basis. All staff must be aware of their obligations to identify all potentially eligible students. OCR should amend Section 504's implementing regulations by adding a clear requirement to provide notice to parents and school staff of the duty to identify individuals eligible under Section 504 and the reach of Section 504 protections. OCR must also ensure that schools' duty to identify all eligible students under Section 504 is clearly defined.<sup>4</sup>

### **Amend the obligation to evaluate to ensure prompt initial identification of students and re-evaluations in response to changes in placement**

While improving notice and Child Find requirements would increase access to accommodations and education for students with disabilities, the barriers they face do not end there. Evaluations themselves, if not conducted appropriately, at the right time, under the right conditions, or with the right approval, can contribute to systemic discrimination. Presently, the regulations dictate that a recipient "shall conduct an evaluation in accordance with" prescribed procedures "of any person who, because of handicap [qualifying disability], needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement." The current regulation language establishes a responsibility to evaluate, but it fails to clearly articulate when a recipient should suspect a person "needs or is believed to need" special education or related services.<sup>5</sup> This omission undermines the obligation to evaluate and even encourages intentional ignorance on the part of recipients. This also contributes to the under-identification or misidentification of students. OCR must amend the regulations to include a stronger, more direct, and well-defined mandate that incorporates parent participation, carefully outlines the obligation, and requires evaluations in situations where eligibility is likely.<sup>6</sup>

### **Amend Section 504's regulations to define a "significant change in placement"**

OCR must amend Section 504's regulations to define a "significant change in placement" as (1) a material change in physical placement that impacts the child's education program, including transfer to an alternative school; (2) the elimination of a service or substantial increase or decrease in a service previously provided to a student with a disability; or (3) exclusion for an indefinite period or more than five consecutive days or a series of suspensions that are each five days or fewer in duration thereby

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<sup>4</sup> OCR must recognize that all federal funding recipients that operate a public elementary or secondary education program have an affirmative obligation to identify and provide services in accordance with Section 504 to all children with disabilities residing in their jurisdiction. The amended Section 504 Regulations should further recognize that Child Find extends to children experiencing homelessness, children who are wards of the state, highly mobile children, children held in immigration detention facilities, children incarcerated in juvenile or adult correctional facilities, and children who are suspected of having a disability, even though they are advancing from grade to grade.

<sup>5</sup> Presently, the regulations dictate that a recipient "shall conduct an evaluation in accordance with" prescribed procedures "of any person who, because of handicap [qualifying disability], needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement."

<sup>6</sup> A revised 34 C.F.R. § 104.35 should require recipients to evaluate Section 504 eligibility under the following conditions: When IDEA eligibility is or has been considered; when a recipient knows or has reason to suspect that a student has a qualifying disability; when a student's behavior indicates that they may be eligible; or when a parent requests an evaluation.

creating a pattern of exclusion. This adjustment will eliminate disputes over the meaning of “significant” and increase routine evaluation, decreasing the likelihood students with disabilities will enter new placements without proper supports.

**Explicitly require parental consent for evaluations, provide for re-evaluation every three years**

OCR must protect individuals with disabilities by requiring parental consent prior to any evaluation, something currently unaddressed in the regulations. The regulations should specify a time period for re-evaluations under Section 504 as every three years, which must be subject to parental consent and may be waived. The current OCR interpretation is that Section 504 requires periodic re-evaluations, and that any change in placement requires a re-evaluation. The requirement should be maintained that a re-evaluation be conducted prior to any change in placement.

**Add specific language assuring parents receive notification of a school’s intention to evaluate, refusal to evaluate, or other actions related to evaluations**

Parents are entitled to be fully informed of any action the school intends to take regarding their child. Since OCR has “interpreted Section 504 to require districts to obtain parental permission for initial evaluations,”<sup>7</sup> updated regulations must assure timely notifications are required when a school intends to evaluate the child and/or the school refuses to evaluate the child. OCR has also inferred and enforced a right to written notice.<sup>8</sup>

**Clarify requirements for evaluations**

OCR must include detailed information in the regulations on (a) the need for qualified evaluators to conduct evaluations, (b) the requirement for a timely evaluation (with a reasonable timeframe), (c) the right of parental consent for evaluations just as there are under IDEA, (d) that all evaluations must be conducted at no cost to the families and that families cannot be required to fund/produce their own evaluations, and (e) that any information, evaluations, etc. that parents bring to the Section 504 meeting must be reviewed and considered as part of the evaluation. In terms of evaluation timelines, the regulations should specify that the school districts’ 504 standards and procedures must include an evaluation timeline that requires that evaluations be done “within a reasonable time” that also considers the student’s post-high school plans, as an up-to-date evaluation will better facilitate the transition process to postsecondary education or adult services. Section 504 does not currently require a specific timeline for evaluation; case law<sup>9</sup> and previous OCR guidance,<sup>10</sup> however, indicate that evaluation must take place within a reasonable timeframe.<sup>11</sup>

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<sup>7</sup> U.S. Department of Education, Office for Civil Rights, Frequently Asked Questions About Section 504 and the Education of Children with Disabilities, Question #42, (2009) at: <https://www2.ed.gov/about/offices/list/ocr/504faq.html>

<sup>8</sup> See, e.g., Redondo Beach (CA) Unified Sch. Dist., 111 LRP 49276 (OCR 2011). (“The Section 504 team’s responsibility to document all decisions and the bases for such decisions, and to provide notice to parents/guardians of its system of procedural safeguards under Section 504 when making identification, evaluation, and educational placement determinations.”)

<sup>9</sup> See: Chuhuran v. Walled Lake Consol. Schools, 839 F. Supp. 465 (E.D. Mich. 1993), at: <https://law.justia.com/cases/federal/district-courts/FSupp/839/465/1444432/>

<sup>10</sup> See: U.S. Department of Education, Office for Civil Rights, Questions and Answers for K-12 Public Schools In the Current COVID-19 Environment, (2020), at: <https://www2.ed.gov/about/offices/list/ocr/docs/qa-covid-20200928.pdf>

<sup>11</sup> In fact, some states have proactively established timelines for 504 evaluations to help districts meet their obligations under the law.

### **Include and disaggregate the experiences of children with disabilities placed by school districts in nonpublic schools in the CRDC**

While tens of thousands of students with disabilities who are placed by their school districts into nonpublic schools are subjected to exclusionary discipline, restraint and seclusion, and other adverse actions, or denied access to experienced teachers, those students' experiences are not adequately tracked by the CRDC. According to data reported to the department as required by IDEA Section 618, 3 percent of students served under IDEA (all of whom are also protected under Section 504) are educated in separate schools (not parentally placed). The IDEA is the only federal education law that provides for students to be placed by school districts in a nonpublic school as a remedy when the public school cannot provide the student with a free appropriate public education. The department's claim that it currently collects data from school districts on these students is insufficient. The department collects enrollment data, but it does not collect any data about how those students are treated in the nonpublic schools. This is data that public school districts already receive and maintain or can access readily — but which is not sufficiently publicly available. The current scope of the CRDC fails to encompass a substantial proportion of the restraint and seclusion experienced by students with disabilities placed in nonpublic schools. As the best available data show, these students experience levels of restraint and seclusion that are magnitudes higher than those experienced by other publicly educated students with and without disabilities.

### **Clarify that Section 504 contains prohibitions against discrimination that are co-extensive with those of the ADA, including reiterating prohibited criteria and methods of administration and the obligation of federally funded programs to provide reasonable modifications**

OCR should clarify that Section 504 prohibits discrimination of the same type and scope as does the ADA. For example, OCR should clarify that programs or activities regulated by Section 504, like those regulated under the ADA, must afford a qualified individual with a disability an opportunity to participate in or benefit from the program or activity that is equal to that afforded to others. OCR should reiterate that Section 504, like the ADA, prohibits methods of administration that have the effect of disability discrimination. Furthermore, OCR should clarify that Section 504's antidiscrimination protections extend to discrimination that may be labeled unintentional and employ a proximate-cause framework. The Supreme Court has recognized the obligation of federally funded programs to provide reasonable modifications under Section 504 since 1985, but the requirement does not appear in the department's Section 504 regulations. The revised regulations should track the reasonable modification requirement, and other general prohibitions against discrimination, as set out in the Department of Justice's regulations implementing Title II of the ADA.<sup>12</sup>

### **Clarify the requirements of Institutions of Higher Education (IHE) to prohibit discrimination of students with disabilities in higher education**

Section 504 is a critical protection for students with disabilities in higher education, who comprise 19 percent<sup>13</sup> of all students in higher education. This data is an underrepresentation of the true number of students with disabilities enrolled in higher education due to the barriers students with disabilities face when accessing services and proof of disability. These barriers have a chilling effect where many students

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<sup>12</sup> See: 28 C.F.R. §35.130(b)(7)

<sup>13</sup> See: Institute of Education Sciences, National Center for Education Statistics, Fast Facts: Students with Disabilities, (2018), at: <https://nces.ed.gov/fastfacts/display.asp?id=60>



fail to report their disability and thus are unable to receive the aid, benefits, and services they need to succeed. OCR should work to eliminate the barriers for students with disabilities in higher education so that necessary supports and services are more accessible to them.

**Require higher education institutions to accept Individualized Education Programs (IEPs) or 504 plans as proof of disability**

Accommodations policies must be simplified and transition from high school made easier by requiring colleges to accept students' high school IEP or 504 plans as proof of disability. Less than half of all colleges that require documentation of a disability accept a student's IEP or 504 plan as valid documentation. In these cases, as a result, students must undergo new, costly evaluations to meet the requirements of many colleges and universities or must forgo receiving the accommodations they are entitled to. Systemic racism, sexism, classism, and fatphobia exacerbate the barriers to receiving disability accommodations and supports. The risk of not graduating increases when students wait to receive accommodations or do not receive them at all. By contrast, students who disclose and obtain accommodations early for their disability can see an increase in their school success, including GPAs. OCR must clarify that when a student enrolls in postsecondary education with an existing 504 plan or IEP, such a plan must be accepted as documentation demonstrating that the individual is a person with a disability, and therefore is eligible for academic adjustment (e.g., auxiliary and/or supplementary aids or other benefit) as required under Section 504.<sup>14</sup>

**Clarify that students with intellectual disabilities in higher education, including students in inclusive postsecondary programs, are "qualified" under Section 504 and can avail themselves of the full panoply of rights under Section 504**

The definition of "qualified" should be clarified to address the circumstances of students with intellectual disabilities. Students with an intellectual disability who have been admitted to a college program specifically designed for such students must be entitled to receive the same academic adjustments and auxiliary aids as all other students. The Higher Education Act was amended in 2008 to allow financial aid for students with intellectual disabilities enrolled in Comprehensive Transition and Postsecondary Education Programs (CTPs) and to authorize model programs and a National Coordinating Center. Since then, more than 300 programs have been established at colleges and universities. These students typically receive a certificate, not a degree. While some of these students receive accommodations or services required by Section 504, others do not. The 504 regulations must be clarified so that IHEs understand that they are obligated to provide students with intellectual disabilities aid, benefit, and services under Section 504 whether the students are in enrolled in CTPs or degree programs.

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<sup>14</sup> OCR must incorporate requirements regarding the critical transition from school to adult life in the 504 regulations, including a requirement for schools to coordinate and collaborate with state and local adult service providers/systems and assisting students to get connected with those adult services providers/systems. This will help to avoid the current situation where students with disabilities who are not covered under IDEA are not aware of their potential eligibility for Section 504 protections in post-secondary education or the availability of adult services from agencies such as vocational rehabilitation. See: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20070316.pdf> and <https://www2.ed.gov/about/offices/list/ocr/letters/parent-20070316.pdf>

### **Update and amend the list of auxiliary aids set out in the “academic adjustments” section of the 504 regulation<sup>15</sup> to include necessary terms<sup>16</sup>**

OCR must add the terms “assistive technology devices” (consistent with the Assistive Technology Act and the IDEA<sup>17</sup>) and the term “accessible formats” to the regulation in order to ensure students are provided every opportunity to access the auxiliary aids they need and to maintain consistency with Title II of the ADA and the National Copyright Act (as amended in 2018 by the MTIA, which changed the term ‘specialized formats’ to ‘accessible formats’<sup>18</sup>). Additionally, digital readers are very common in most educational settings and should be specified as an auxiliary aid. The addition of the new sentence, ‘Additional accessible formats may be considered as technological advancements are made’ is a helpful way to clarify that the list (and availability of updated technology to qualifying individuals) is flexible, and that the list is not exhaustive, under the regulation.

### **Ensure protections for students with disabilities from the use of restraint, seclusion, and corporal punishment**

Federal support for harmful policies and practices, such as seclusion, restraint, and corporal punishment, directly undermines academic success, criminalizes children, and interferes with proven and evidence-based efforts to build positive relationships in schools and climates conducive to learning and child well-being. A regulatory directive is badly needed to stop schools from subjecting students with disabilities to unfair, unnecessarily harsh, and, most importantly, discriminatory disciplinary practices. Students with disabilities in the United States are routinely subjected to dangerous, dehumanizing restraint and seclusion practices in public schools. Public reports on seclusion by news media in the United States have revealed that it both traumatizes and even can physically harm children.<sup>19</sup> These practices are used more often and disproportionately on Black youth and youth of color with disabilities. There is a clear denial of educational opportunity, and children are dying because they are being restrained. Corporal punishment is a harmful and dangerous practice, which is explicitly allowed in 19 states<sup>20</sup> and disproportionately harms Black children and children with disabilities.<sup>21</sup> The use of corporal punishment has been most freely used in schools with students who have a larger percentage of students who are identified as Black.<sup>22</sup> There is never an educational justification for hitting children. Even in those jurisdictions that generally prohibit corporal punishment, they usually allow the use of restraints, inclusive, and sometimes even aversive, on students with disabilities; these practices are disproportionately used on children with disabilities of

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<sup>15</sup> See: 34 C.F.R. § 104.44(d)(2)

<sup>16</sup> Auxiliary aids may include assistive technology devices, taped texts, other accessible formats, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, digital readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Additional accessible formats may be considered as technological advancements are made. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

<sup>17</sup> See: 20 U.S.C. 1401(1)

<sup>18</sup> United States Copyright Office, Understanding the Marrakesh Treaty Implementation Act, (2020), at [https://www.copyright.gov/legislation/2018\\_marrakesh\\_faqs.pdf](https://www.copyright.gov/legislation/2018_marrakesh_faqs.pdf)

<sup>19</sup> Richards, Jennifer S., Cohen, Jodi S., and Chavis, Lakeidra. “The Quiet Rooms.” ProPublica. Nov. 19, 2019. <https://features.propublica.org/illinois-seclusion-rooms/school-students-put-in-isolated-timeouts/>

<sup>20</sup> Gershoff, E. T., & Font, S. A. “Corporal Punishment in U.S. Public Schools: Prevalence, Disparities in Use, and Status in State and Federal Policy.” Social policy report, 30, 1. 2016. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5766273/>

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

color.<sup>23</sup> Given the well-documented harms of seclusion, corporal punishment, and restraint, the regulation should prohibit seclusion and corporal punishment in all instances and significantly restrict the use of restraints.<sup>24, 25</sup>

### **Clarify that children with disabilities should be excluded from threat assessment processes**

Threat assessments pose major risks for and to students, including increased and early contact with law enforcement, over-identification of students of color and students with disabilities (and students at the intersection of those identities) for “threatening” behavior, and undermining of students’ rights under civil rights laws, including IDEA and Section 504. Threat assessment systems criminalize children, further harm marginalized communities, and interfere with proven and evidence-based efforts to build positive relationships in schools and climates conducive to learning and child wellbeing. Threat assessments also pose a risk to the privacy rights of children and the rights of children under the IDEA and Section 504. Moreover, the anecdotal evidence suggests that in many instances, once misconduct is deemed even mildly threatening, threat assessment teams have exercised inappropriate authority and used the process to circumvent students’ well-established due process rights, including those protected through the requirements of the IDEA and Section 504. It is inappropriate for a child with disabilities to be included in a threat assessment process because they already have an IEP or Section 504 plan, developed and monitored by a team that is familiar with the child’s strengths and needs, that identifies accommodations and services and a process for reassessing whether existing supports are appropriate. We urge OCR to clarify that children with disabilities should be excluded from threat assessment processes.

### **Clarify the rights of students in the face of evolving disciplinary methods**

Schools are increasingly implementing “non-traditional” forms of discipline, which are leading to frequent school exclusions for students with disabilities. Examples include forced virtual school attendance, exclusions while psychiatric evaluations are pending, shortened school days, and “voluntary” parent removals of children that are urged and imposed to avoid formal suspensions. These exclusions are often “off the books” and therefore are not documented in the same way as other, more common discipline exclusions, such as in-school suspension, out-of-school suspension, and expulsion. As a result, schools do not provide any of the procedural safeguards required by federal and state law. However, these exclusions are no less harmful and are the source of growing discrimination against students with disabilities. Large swaths of disciplinary action are going unrecognized and unregulated, as fundamental student rights go unobserved and unprotected. These new forms of punishment should trigger protections under Section 504 and demand the same attention from OCR. As the pandemic continues, and virtual learning becomes more ingrained in daily school life, this problem has only grown in magnitude. Along with addressing more traditional forms of disciplinary removals from the classroom, OCR should amend Section 504’s implementing regulations to ensure that all school exclusions are recognized for what they

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<sup>23</sup> Ibid.

<sup>24</sup> In November 2018, a 13-year-old autistic child died after being restrained for nearly two hours in a school in El Dorado Hills, California. See: Fry, Hannah. “After autistic boy dies during school restraint, 3 educators charged with manslaughter.” Los Angeles Times. November 13, 2019. Source: <https://www.latimes.com/california/story/2019-11-13/autistic-boy-dies-school-restraint-educators-charged-manslaughter>

<sup>25</sup> The following standards should be considered for significant limits on restraints in the regulation: there should be a blanket prohibition on using mechanical restraint; using chemical restraint; and using prone, supine, or physical restraint that restricts breathing, stops blood flow to the brain, or is life threatening.



are — denials of access to education for which students with disabilities must have protection to prevent further discrimination.

### **Align Section 504 definitions with those found in the Americans with Disabilities Act Amendments Act of 2008, including changing “handicap” to “disability” and updating “major life activities”**

The Americans with Disabilities Act Amendments Act of 2008 replaced the use of the word “handicap” with “disability” and updated the definition of a person with a disability that is meant to be constructed broadly in favor of expansive coverage and includes a non-exhaustive list of major life activities.<sup>26</sup> The use of the word “handicap” should be removed from Section 504 regulations and updated to be in alignment with the definition of “disability” found in the ADA. The term “handicapped” is largely obsolete as a term for “disability” in law and regulation and it is often seen as pejorative. “Person with a disability” is an example of person-first language. Person-first language is intended to promote inclusion and equality by emphasizing individuals as people first rather than defining them by their disability. With respect to specific communities, many in the disability community prefer the use of identity-first language such as “Deaf person” or “autistic person,” which allows the individual to claim the disability as part of their own identity and determine its meaning, rather than permitting others (e.g., authors, educators, or researchers) to define the meaning of that disability for them. Updating the definitions in the regulations not only brings the regulations into harmony with other relevant civil rights laws, but also gives individuals the opportunity to choose and define for themselves how they identify with their disability.

### **Ensure consistent eligibility by incorporating the 2008 ADA amendments**

In addition to expanding the coverage of evaluations to reach all individuals who may be eligible for Section 504 supports, OCR must amend the regulations to expand the scope of eligibility. The ADA Amendments Act of 2008 did this, and OCR has treated that as sufficient through frequently asked questions materials,<sup>27</sup> but much confusion remains. That confusion could be resolved by amending Section 504’s implementing regulations and eliminating any perceived discrepancies. OCR should incorporate the ADA Amendments Act of 2008’s definition of eligibility into 34 C.F.R. 104.3(l). This would not require OCR to do more than ratify its own policies, but it would bring clarity.

### **Reiterate that “substantial limitation,” as it currently appears in the definition of “handicapped person,” does not require extensive documentation**

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<sup>26</sup> The Americans with Disabilities Act Amendments Act of 2008, “provides a non-exhaustive list of major life activities and specifically expands the category of major life activities to include the operation of major bodily functions.” As outlined in the ADA Act of 2008, “Major life activities include, but are not limited to: (i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and (ii) The operation of a major bodily function, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system. See: Americans with Disabilities Amendments Act Regulations, (2008) at: [https://www.ada.gov/regs2016/final\\_rule\\_adaaa.html](https://www.ada.gov/regs2016/final_rule_adaaa.html)

<sup>27</sup> See U.S. Department of Education, Office for Civil Rights, Protecting Students With Disabilities Frequently Asked Questions About Section 504 and the Education of Children with Disabilities: <https://www2.ed.gov/about/offices/list/ocr/504faq.html#terms> and Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools: <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.html>

OCR clarified through its 2012 Dear Colleague Letter,<sup>28</sup> "while there are no per se disabilities under Section 504 and Title II, the nature of many impairments is such that, in virtually every case, a determination in favor of disability will be made. Thus, for example, a school district should not need or require extensive documentation or analysis to determine that a child with diabetes, epilepsy, bipolar disorder, or autism has a disability under Section 504 and Title II."<sup>29</sup>

### **Review the guidance issued on ensuring Free Appropriate Public Education (FAPE) for students with ADHD**

Students with ADHD are sometimes incorrectly identified as 504-only when IDEA services may be more appropriate, leading to inadequate supports and unequal access at school. Due to a significant number of widespread complaints filed with OCR alleging discrimination against students with ADHD, OCR published in 2016 a Dear Colleague Letter and Resource Guide on Students with ADHD<sup>30</sup> with the intent of providing clear guidance to schools on their obligations to these students under Section 504. The document also laid out procedural safeguards for students and families. The guidance is applicable to the disability community at large — not just those with ADHD — as evidenced in recent years since its publication. To the greatest extent possible, the provisions outlined in the letter and resource guide should be codified in the 504 regulations, so that structured, consistent methods for Section 504 implementation are readily accessible and unambiguous to educators and families.

### **Clarify that Section 504 requires manifestation determination reviews**

The current regulations state that placement decisions must be based on evaluative data and be made by a group of persons knowledgeable about the student.<sup>31</sup> OCR has interpreted this provision as requiring districts to conduct manifestation determination reviews (MDRs) before removing students with disabilities for more than five days.<sup>32</sup> No child should ever be suspended for even one day because of their disability. Because the existing Section 504 regulation is relatively silent about protections from inappropriate discipline for students with disabilities, compared to the IDEA, school districts more frequently discipline students with 504 plans for behavior even if it manifests from their disability.<sup>33</sup> The revised regulation must clarify that this conduct violates the law. Additionally, the regulation should explicitly require that schools conduct a manifestation determination within 10 days of any decision to change the child's placement because of a violation of a code of student conduct (such as for suspension for more than five consecutive days or constitute a series of removals that constitute a pattern). The regulations should also clarify that, like under the IDEA, there are no "free days," and that frequent use of

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<sup>28</sup> See: U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter, (2012), at: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201109.html>

<sup>29</sup> Ibid

<sup>30</sup> See: U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter and Resource Guide on Students with ADHD, (2016), at: <https://sites.ed.gov/idea/files/OCR-letter-07-26-2016.pdf>

<sup>31</sup> See: 34 CFR 104.35(c)

<sup>32</sup> See: OCR Staff Memorandum, 16 IDELR 491 (OCR 1988). South Harrison County (MO) R-II Sch. Dist., 51 IDELR 110 (OCR 2008) (The district here should have considered whether the student's verbal and physical attacks against an employee were a manifestation of her disabilities.)

<sup>33</sup> Adding a specific clear requirement for manifestation determination reviews to be conducted prior to the imposition of any school discipline, including restraints, exclusion, or changes in placement, would ensure that recipient schools carefully consider a child's disability and its impact prior to the administration of disciplinary measures. Although the current implementing regulations are silent on the requirement for manifestation determinations under Section 504, numerous educational agencies and OCR have inferred this requirement for significant changes in placement.

short-term disciplinary removals of students with disabilities indicates that a child's 504 plan does not appropriately address their behavioral needs, and likely constitutes a denial of FAPE.

### **Add a “stay put” provision for 504-eligible students with pending dispute resolutions**

There is currently no “stay put” provision under Section 504, which prevents a school from unilaterally changing a student's placement prior to the ultimate outcome of a manifestation determination review, which may include the parents' formal challenge to the school's placement decision. This is another way in which Section 504's protections fail to match those of IDEA and leave students with disabilities vulnerable to discriminatory changes in placement, even in situations where the behavior prompting the change in placement is later determined to have been a manifestation of the student's disabilities. OCR itself has said that “a fair due process system [under Section 504] would encompass a district waiting for the results of due process before making the change.” It is time to close this loophole and prevent discriminatory changes in placement, which disrupt learning and have long-term consequences for those students who need stability and support services the most. OCR must revise the regulations to make clear that 504 eligible students maintain their current placement during the pendency of any impartial hearings requested by the parents.

### **Provide clarity on the requirements of entities to provide FAPE and an education free from discrimination to students with disabilities in childcare, preschool, prekindergarten, and Early Head Start/Head Start settings**

The current regulations on Section 504 as it relates to preschool<sup>34</sup> are cursory, leading to confusion about the obligations of institutions receiving federal financial assistance as it relates to providing FAPE to children in federally funded childcare, preschool, prekindergarten, and Head Start. Given the vast advancements in the provision of early educational opportunities for preschool-aged students in recent years, more robust regulations are needed to ensure that these programs are free from discrimination for young students with disabilities.<sup>35</sup>

### **Ensure all students have equal access to campus housing, particularly students with disabilities**

Inability to attain housing near where an institution of higher education is located acts as a significant barrier to college enrollment. Living outside the state or significantly far away from campus may limit a student's attendance and reduce the amount of time they have available to study and focus on their academic success. Commuting long distances by car or by using public transportation may be unaffordable, particularly for lower-income students. Due to school policy, many students with

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<sup>34</sup> See: (§104.38)

<sup>35</sup> OCR should consider taking the following actions: 1) Clarifying the age range covered under the 504 regulations and particularly under 104.38 of Subpart D, including that protections against discrimination under 504 begin at birth; 2) Clarifying whether these regulations apply to non-LEA community-based public and private programs receiving federal funds including pre-K, child care, Home Visiting, Early Head Start and Head Start OR whether these entities are included solely under the 504 regulations under the Department of Health and Human Services (HHS); 3) Examining whether the provisions of Section 504 are consistently being applied across all relevant federal agencies as they relate to young children and to what extent OCR is coordinating with these agencies to ensure that protections are consistent and rigorous across all agencies; and 4) Clarifying when a preschool-aged child is attending a community program, such as child care or Head Start, in which the LEA is not the grantee and the entity is receiving federal funds: The agency responsible for evaluating a preschool child for eligibility under 504; The entity responsible for the provision of services if the child is found eligible under 504; The requirements of the entity to develop a 504 plan and carry out the obligations of Subpart D; and The agency responsible for providing “aid, benefits or services” for such a preschool child.

intellectual or developmental disabilities, such as Transition and Postsecondary Programs for Students with Intellectual Disability (TPSID) students, may nonetheless be prohibited from living on campus in the same dorms as students without disabilities. In order to ensure equal opportunity for students with disabilities, all students (including TPSID students) must have equal access to the same campus housing and campus facilities (nurse's offices, counseling, etc.), such that students in TPSID programs are able to live on campus and therefore successfully enroll in and attend school. The Leadership Conference and the signers of this letter encourage the department to support policy changes or alterations to the status of TPSID students to ensure that they can attain access to campus housing and facilities on an equal basis to students without disabilities.

**Clarify that Section 504 allows both damages and educational services; require notice of each**

The relief available under Section 504 is not identical to that under IDEA. Further, since recipients and courts are more familiar with claims brought under IDEA, the pursuit of relief under Section 504 is often treated the same. This is a problem, since Section 504 allows for money damages, whereas IDEA does not. As a result, students who have been discriminated against suffer further deprivations at the relief stage either because they are not aware of the relief available, or others deny the availability of that relief. OCR should amend Section 504's implementing regulations to make clear to all that both compensatory educational services and damages are available under the statute. Additionally, OCR should require that recipients provide notice of this to students and parents to guarantee that those harmed know what remedies are available to them.

**The 504 regulations must assure the accessibility needs of students with disabilities, including those with intellectual and developmental disabilities (IDD), are fully addressed and incorporate the principles of Universal Design for Learning (UDL)**

Students with disabilities, including those with IDD, have unique cognitive and communicative needs that must be accommodated. The updated Section 504 regulations can help mitigate issues related to accessibility for students with disabilities by promoting the use of UDL<sup>36</sup> in all communications, stipulating the use of plain language in written communications and allowing for advocacy supports to be made available to students with disabilities when needed.

**504 must include updates for Accessible Communication consistent with the 2014 joining guidance from the Department of Education and the Department of Justice (DOJ) on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools<sup>37</sup>**

OCR must use the DOJ guidance as a model for increased regulations on effective and accessible communication.<sup>38</sup> The existing Section 504 regulations make some references to concepts that underlie effective communication,<sup>39</sup> but these are inadequate to articulate the appropriate obligation of recipients

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<sup>36</sup> See: CAST, UDL Guidelines, (2018), at: <https://udlguidelines.cast.org/>

<sup>37</sup> See: U.S. Department of Justice, Civil Rights Division, and U.S. Department of Education, Office for Civil Rights and Office of Special Education and Rehabilitative Services, Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools, (2014) at: <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs-effective-communication-201411.pdf>

<sup>38</sup> Ibid.

<sup>39</sup> See e.g. 34 C.F.R. § 104.52(c) & (d)

to ensure effective communication. The revised regulations should track the effective communication standards set out in the DOJ's regulations implementing Title II of the ADA.<sup>40</sup> We further urge the Department of Education to safeguard and assure the effective communication rights of the estimated 5 million people in this country who cannot rely on speech alone to be heard and understood. Such individuals instead must rely on augmentative and alternative communication (AAC). Those who rely on AAC frequently use multiple means of expression and are diverse in terms of race, disability, age of onset, primary language, geography, and other socioeconomic factors. Additionally, the research also indicates Black, Indigenous, Latino, and Asian American Pacific Islander people, and people whose primary language is not English, are more at-risk for disabilities and conditions that might require them to use AAC and face greater bias, discrimination, and disparities when accessing AAC.

**Accommodations must be provided to students with intellectual and other disabilities, including in incidences related to code of conduct violations**

Updated 504 regulations should state explicitly the obligation of schools to ensure the equitable treatment and participation of students with disabilities, including intellectual disabilities, in disciplinary proceedings. Students must be provided sufficient time to request accommodations, which may include communication support.<sup>41</sup> Without appropriate accommodations, students may face barriers to reporting their experiences of harassment or other forms of mistreatment, or they may face barriers in responding to accusations regarding their own conduct.

**Clarify that refusal to consider admitting a student who has a legal guardian is a violation of 504**

Some programs for students with intellectual disabilities have admission requirements that do not allow students who have legal guardians to apply. A blanket refusal to consider admission for such students, who may otherwise qualify for admission, is discriminatory and a violation of their civil rights. OCR should clarify that refusal to consider admitting a student who has a legal guardian is a violation of Section 504.

**Require 504 plans to be written documents that are created through the consultation of a group of school professionals and a legal parent or guardian**

It is currently unclear whether 504 plans are required to be written documents of record, leading to implementation issues and potentially posing problems for students served by Section 504, including students in higher education.<sup>42</sup> The lack of clear requirements for written Section 504 plans and parental and student participation in the Section 504 planning process prevents students and their parents/guardians from knowing what services, accommodations, and care will be provided by recipients and who will provide it. These deficiencies also serve as barriers to students and their parents/guardians when they attempt to hold the recipient accountable for discrimination. Even when potentially 504-eligible students are properly notified, identified, and evaluated, they are not guaranteed to receive and benefit from appropriate accommodations. Currently, the regulations show great deference to schools and provide limited opportunities for parental input with respect to appropriate accommodations.

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<sup>40</sup> See 28 C.F.R. § 35.160 to 35.164

<sup>41</sup> For example, a student with intellectual and other disabilities may want access to communication support, such as someone to assist them in a meeting with communicating to staff members and understanding information shared.

<sup>42</sup> Currently, OCR has indicated its position that schools may incorporate a 504 plan into a written document but are not required to do so. See Parent Educator Resource Guide, [www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf)



Unpredictable procedural protections and vague Section 504 plans lacking requisite details result in an absence of meaningful and consistent accommodations, undermining the ability of a student with disabilities to equally access education. Moreover, in sharp contrast to the IEP process, parental input and approval is lacking. OCR must introduce an explicit requirement that schools develop a written Section 504 plan, establish timelines for the development and implementation of such plans, and include students and their parents/guardians as mandatory members of the Section 504 planning process. Requiring plans to be written will promote understanding of their legal operability and ultimately increase overall accountability. Furthermore, the regulations should make clear the rights, roles, and responsibilities of parents and guardians as critical members of a student's school support or "504 team." Parents' and guardians' roles — as well as a district's obligation to inform and meaningfully include parents and guardians — must be clear for each component of the 504 educational process, from assessment and eligibility to the determination, provision, and evaluation of appropriate services and accommodations. Parents and guardians must be given the opportunity to exercise informed consent throughout the entire process. The regulations should include the requirement for parent participation in the development, updating, and revision to the 504 plan, and a requirement for at least annual review and revision, as necessary, of the 504 plan.<sup>43</sup> The regulations should include language indicating that all Section 504 plans and all communication related to Section 504 plans, such as notice of 504 meetings, must be in writing (and in the parent's language consistent with Title VI of the Civil Rights Act of 1964 and Executive Order 13166).

**Ensure that recipients of federal financial assistance procure, design, maintain, and use websites, information and communication technologies (ICT), and other forms of communication that are accessible to and usable by the widest range of people with disabilities possible**

Recipients of federal financial assistance are becoming more and more dependent on information and communication technology to provide goods and services and to share information. For people with disabilities, accessibility of websites and other ICT is a necessity — not a luxury or a convenience — that fosters independence, economic self-sufficiency, and active, meaningful participation in civic life. These issues are not limited to those with sensory disabilities; many individuals with other disabilities, such as those who use AAC devices, those with intellectual and developmental disabilities, and many more find that they are unable to access online systems that are integral to modern daily life. This phenomenon became overwhelmingly clear during the pandemic when federally funded educational programs and activities moved to digital platforms. OCR should explicitly clarify that the nondiscrimination provisions in Section 504 also apply to ICT. Inaccessible ICT, websites, applications, and communications exclude students, parents, and others with disabilities from equal participation in and deny the benefits of many aids, services, programs, and benefits funded by the Department of Education. Furthermore, OCR should coordinate with other agencies, including DOJ and the Department of Health and Human Services, to develop clear and enforceable accessibility and usability standards. We encourage the agencies to

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<sup>43</sup> Currently, OCR "urges" schools to allow for parental participation when considering any change in the student's Section 504 provision of FAPE, including location of services, but does not require it. This minimizes the critical role of parents in the decision-making process and makes it less likely that the decisions that are made, including the contents of the 504 plan, will be appropriate and meet the needs of the student with a disability. OCR should significantly strengthen the procedural safeguards in the Section 504 regulations, including requiring informed, written parental consent for evaluations and at least the initial 504 plan; written notification of parental rights including the right to participate in all meetings related to Section 504 eligibility, evaluation and identification, and plan development and revision.

consider aligning the standards with Section 508 and to reference the internationally accepted Web Content Accessibility Guidelines (WCAG) 2.1 Levels A and AA in such a way that these standards can be updated as the industry standard evolves.

#### **Expand access to NIMAS-derived materials for students served by Section 504**

Accessible-format educational materials created from National Instructional Materials Accessibility Standard (NIMAS)-derived sources currently require a beneficiary to be eligible for services under IDEA.<sup>44</sup> A large number of Blind/Visually Impaired students receive accommodations under Section 504 and are not considered IDEA-eligible. Consequently, IDEA eligibility is the sole limiting factor denying access to accessible curriculum materials for the very group of beneficiaries whose needs it was originally designed to address. Both the Marrakesh Treaty Implementation Act (MTIA)<sup>45</sup> and its associated Senate report<sup>46</sup> document congressional intent to maximize access to “Accessible Formats” by all qualified individuals with disabilities. Providing access to NIMAS-derived materials to Section 504-eligible students would more greatly fulfill that intent.

#### **Clarify that 504-eligible students must be provided accessible educational services when their disability prevents them from attending schools in person**

During the pandemic, medically vulnerable students who could not attend schools in person were provided with a small fraction of the educational services and minutes provided to their peers. States relied on the IDEA's least restrictive environment (LRE) requirement to argue they could not provide a full spectrum of virtual educational services to these students. OCR clarified that services must be provided, and updated regulations must do the same.

#### **Clarify the requirements of schools to conduct due diligence on the eligibility of students for services under both the IDEA and Section 504**

It must be clear that schools can — and in many cases should — consolidate IDEA and 504 eligibility meetings to ensure that the student’s needs are being adequately met by whichever services they are found eligible for. The regulations must make clear that when a child is found ineligible for services under IDEA, a district and school team should automatically pivot and move from the IDEA eligibility determination meeting to a discussion about the individual’s eligibility under Section 504. Consistent with a previous recommendation provided on parent involvement, this recommendation assumes the team assembled includes any required participants, including the parent/legal guardian. It should also be made clear that there are many instances in which a student can, and should, be found eligible and served under IDEA and Section 504 concurrently. In the interest of clarity for students, families, and educators, if a child is IDEA-eligible, the IEP should identify all the specially designed instruction, services, and accommodations that the child should receive — both those needed to provide FAPE, but also anything more that is needed to provide equal educational opportunity. Regulations should also make clear that

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<sup>44</sup> U.S. Department of Education, Office of Special Education and Rehabilitation Services, Office of Special Education Program. Questions and Answers on the National Instructional Materials Accessibility Standard (NIMAS). August 9, 2021. See: <https://sites.ed.gov/idea/files/qa-nimas-08-9-2021.pdf>

<sup>45</sup> See: United States Copyright Office, Understanding the Marrakesh Treaty Implementation Act, (2020), at [https://www.copyright.gov/legislation/2018\\_marrakesh\\_faqs.pdf](https://www.copyright.gov/legislation/2018_marrakesh_faqs.pdf)

<sup>46</sup> See: United States Senate, Report on the Marrakesh Treaty Implementation Act, (2018), at: <https://www.govinfo.gov/content/pkg/CRPT-115srpt261/html/CRPT-115srpt261.htm>

schools/districts should avoid using alternatives to 504 plans, for example “health plans,” for children who meet the criteria of 504 plans. These alternatives do not provide the same level of protection and procedural safeguards. Further, the regulations should specify that parents may reject IDEA services for their child with a disability and still be able to access services under Section 504 if their child meets the eligibility criteria for Section 504.

**Clarify the obligation of entities to provide the services most appropriate to the student, whether direct or consultative services, to ensure the provision of FAPE**

In many instances, students served under Section 504 require direct services (as opposed to consultative services only), such as direct instruction from a teacher or supplemental therapies provided by related professionals, in order to receive their entitlement of FAPE. There has been some confusion from LEAs about whether or not students eligible under Section 504 can and should receive direct services, which may look similar to services provided to students with disabilities who receive services under IDEA. OCR must make it clear that it is the obligation of an educational entity to provide whichever services, whether direct or consultative, accommodations, and supplemental aids as are necessary in order to best meet the needs of the student and allow them to appropriately access their education.

**Ensure access to accelerated programs, extracurricular activities, electronic book readers, and assistive technology**

OCR must ensure that students with disabilities have access to all programs and activities offered in school, such as accelerated programs, extracurricular activities, electronic book readers, and assistive technology. OCR’s Dear Colleague Letter indicates that the practice of denying, on the basis of disability, a qualified student with a disability the opportunity to participate in an accelerated program violates Section 504, which must be explicitly addressed in the regulations.<sup>47</sup> OCR should also include language in the regulations that clarifies students with disabilities have access to an education during public health emergencies, such as during the COVID-19 public health crisis. School officials have an obligation to avoid discrimination on the basis of disability under Title II and Section 504, while cooperating with public health authorities to ensure that students with disabilities have access to the school’s education program. OCR should explicitly include language in the regulations that uplifts OCR’s interpretation of Section 504, which asserts that students with disabilities have an equal opportunity for participation in nonacademic and extracurricular services and activities and urges that they be explicitly included in the regulations. OCR should also explicitly include language in the regulations about the need to provide access to assistive technology, including electronic book readers among other assistive technology devices and tools. OCR should also include language that requires accessible instructional materials — including technology and software when needed (e.g., text to speech, and speech to text, along with tablet or computer).

**Use of alternate assessment cannot contribute to the segregation of students with significant cognitive disabilities**

Clarify that it would be a violation of Section 504 to limit a child’s access to the general curriculum or a regular diploma, or to otherwise segregate children (such as placing them in separate classrooms or

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<sup>47</sup> United States Department of Education. Office for Civil Rights. Dear Colleague Letter: Access by Students with Disabilities to Accelerated Programs. December 26, 2007. <https://sites.ed.gov/idea/files/colleague-20071226.pdf>

schools with only other students with disabilities) based on their participation in the alternate assessment as provided under the Every Student Succeeds Act (ESSA). Given that students of color are more likely to participate in the alternate assessment, inappropriate segregation of these children, or overrepresentation of these students in segregated placements, may violate Title VI of the Civil Rights Act in addition to Section 504.

### **Clarify the word “solely” in Section 504 to be consistent with Title II of the ADA**

In the new regulations, we urge the department to clarify that the basis for discrimination under Section 504 is the same as in the ADA. Because Section 504’s language states that it extends rights to those who are discriminated against “solely” by reason of disability, courts have misinterpreted this language to mean that the only, sole reason someone faced discrimination was because of a disability.<sup>48</sup> If any other factor was also involved, then 504 would not apply. We believe this misconstrues the intention and spirit of Section 504. Title II of the ADA updated its language to prohibit discrimination “on the basis of disability.”<sup>49</sup> Courts are more clear that this does not rule out that disability may be one factor among others. We encourage the department to promulgate a new regulation that clarifies that “solely on the basis of disability” in Section 504 should be interpreted to be consistent with the standards set forth in Title II. In that way, people with disabilities need not prove that their disability was the “sole” reason for the discrimination treatment. The presence of a disability should be sufficient; there need not be an absence of other conditions or characteristics.

As organizations committed to the fair and appropriate treatment of all children in all settings, we continue to press for changes to policy and practice — including updating Section 504 regulations that protect children with disabilities from discrimination. Thank you for your consideration of our recommendations. If you have any questions or need additional information, please contact Steven Almazán, K12 education senior program manager at The Leadership Conference on Civil and Human Rights, at [almazan@civilrights.org](mailto:almazan@civilrights.org).

Sincerely,

The Leadership Conference on Civil and Human Rights  
The Leadership Conference Education Fund  
AACTE (American Association of Colleges for Teacher Education)  
American Atheists  
American Civil Liberties Union (ACLU)  
American Humanist Association  
Asian Americans Advancing Justice | AAJC  
Association of People Supporting Employment First (APSE)  
Association of University Centers on Disabilities (AUCD)  
Autistic Self Advocacy Network  
Bazelon Center for Mental Health Law  
Bend the Arc: Jewish Action

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<sup>48</sup> 29 U.S.C. § 794(a)

<sup>49</sup> 42 U.S.C. § 12182(a)

Council of Parent Attorneys and Advocates  
Disability Rights Education and Defense Fund  
Education Law Center-PA  
Hispanic Federation  
Impact Fund  
Japanese American Citizens League  
NAACP  
National Alliance for Partnerships in Equity  
National Association of Councils on Developmental Disabilities  
National Center for Learning Disabilities  
National Center for Transgender Equality  
National Center for Youth Law  
National Disability Rights Network (NDRN)  
National Down Syndrome Congress  
National Employment Law Project  
National Network for Arab American Communities (NNAAC)  
Robert F. Kennedy Human Rights  
The Arc of the United States