



Key points:

- Look beyond grades in determining disability under 504
- Recognize impairments that are episodic, in remission
- Provide copy of procedural safeguards, which include right to challenge decisions

Review noteworthy scenarios from OCR's latest guide on Section 504

For the most part, OCR's [Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#), published Dec. 28, serves as a reminder to districts of their obligations to students with disabilities under Section 504.

What makes it stand out, however, is that in it OCR breaks down the basic steps of Section 504, said Gwen J. Zittoun, school attorney with [Shipman & Goodwin LLP](#) in Hartford, Conn.

"This is almost like the outline of a procedures manual," Zittoun said. "We haven't received anything like that from OCR in the past."

The agency tends to favor FAQs, which can be helpful for fact-specific issues but aren't as useful for training staff on the overall aspects of the law, Zittoun said.

In this guide, OCR explains at length the meaning of disability under Section 504 and the process for determining if a student is [eligible](#). The guide includes comparisons between Section 504, Title II of the ADA, and the IDEA as well as important reminders, including:

- A student with average or above-average grades can still have a disability under Section 504.
- In determining eligibility, teams must consider other major life activities besides learning.
- A student may be protected from discrimination even if she doesn't need any services or accommodations through a 504 plan.
- Schools cannot require a parent of a child with a disability to attend a field trip to care for the student.
- Retaliation based on a parent's advocacy for their child with disabilities is prohibited under Section 504.

To illustrate these and other points, OCR proffers 11 scenarios. Consider using these as case examples for your next staff training session. Review a sample of three scenarios districts face, edited for length and clarity, followed by expert analysis of each:

Scenario: *A fourth-grade teacher notices that a student has trouble concentrating during class and takes significantly longer than most students to complete in-class assignments. The teacher doesn't think the student needs special education services because she is earning B's and C's. What should the teacher do?*

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OCR says: "The teacher needs to inform the proper individuals in the school system that the student needs to be evaluated."

This has been one of OCR's frequent messages in the past several years, Zittoun said. A student's average or even above-average grades do not disqualify him from Section 504.

School attorney Jocelyn P. Kramer with [Weiss, Burkardt, Kramer LLC](#) in Pittsburgh said she agrees.

"One of the long-time issues for most districts is this idea that the kid is doing fine, so [he] doesn't need a 504 plan. Or, the student is getting A's and B's, so [she] doesn't qualify," she said.

A high-performing student may need to spend considerably more time and effort than other students on assignments to compensate for her disability. Staff need to think about that in the context of a disability-related concern and refer the student for an evaluation, Zittoun said. In determining if the student is substantially limited, the team might compare how long it takes the student to perform a task with how long it takes most people in the general population to perform the same task, she said.

Scenario: *Maya's mom presented Maya's teacher with a medical report indicating that Maya suffers from gastroesophageal reflux disease. Maya's mom then asked the teacher if the school would evaluate Maya for Section 504 services. The teacher told Maya's mom not to worry, noting that an evaluation "is not necessary at this time because Maya continues to do well in all her classes." The teacher then promised to let Maya's mother know immediately if Maya's grades begin to decline. Should the teacher have responded in this manner?*

OCR says: "No. ... Given these specific facts -- a medically-diagnosed problem with the student's digestive system, and the parent's report that the student is frequently forced to miss school because of this medical problem -- Section 504 would require the school to refer Maya for a Section 504 evaluation."

In addition, OCR said that the school should have provided the parent with a copy of the district's procedural safeguards, including the right to challenge the district's refusal to evaluate the student.

OCR emphasizes that learning is not the only major life activity that teams must consider, Zittoun said. This scenario is also a good reminder for staff about "issue spotting," she added.

"It's not necessarily about solving the problem, but it's saying, 'OK, I'm not an island unto myself,'" she said.

The teacher should bring the parent's request to the appropriate personnel in her building. Then, a team could look at the information and decide if an evaluation is necessary.

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Scenario: *Doctors diagnosed Omar with cancer at the beginning of summer. When initially diagnosed, Omar was weak and tired all the time, and, at times, unable to even get out of bed or dress or feed himself. He received chemotherapy and returned to school without any symptoms of his disease. It is now November and his disease appears to be in remission. Omar's mom notes that he runs and plays like all the other children and that his grades are great. How would a group of knowledgeable persons determine if Omar has a disability?*

OCR says: "A student who has an impairment that is episodic or in remission is considered to be a person with a disability if, when active, the impairment substantially limits a major life activity. ... Even if Omar does not need special education or related aids and services, he would still be protected under Section 504, for example, from bullying and harassment based on his disability."

It's often difficult for schools to grasp that a student may have a disability under 504 but may not need any accommodations or services under a 504 plan, Kramer said. It's important to keep track of these students, however, because they are entitled to 504's antidiscrimination protections, she said. Use a "monitoring only" plan to recognize that the student is a protected student but doesn't need any services at this time, Kramer said. Like students who are in remission, students who successfully use mitigating measures such as medication may also be protected under 504, but not need any services, she added.

[Jennifer Herseim](#) covers Section 504, education technology, and Common Core issues related to special education for LRP Publications.

January 17, 2017

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