



Repealed or Denied Vaccine Exemptions May Warrant the Filing of a Complaint with the U.S. Department of Education's Office of Civil Rights Under Section 504 of the Rehabilitation Act of 1973

This document includes the followingⁱ:

- A guide to filing a discrimination complaint with the Office of Civil Rights (OCR) division of the U.S. Department of Education under Section 504 of The Rehabilitation Act of 1973.
- A list of sanctions OCR can impose on out of compliance federally funded institutions.
- An analysis of potential violations of Section 504 of The Rehabilitation Act of 1973 arising from the exclusion of students with disabilities from school due to their vaccination status.

Filing a Discrimination Complaint with the U.S. Department of Education

Who: A person with disabilities who is denied rights under the Act, or a person acting on their behalf, may file a complaint through OCR. Legal representation is not necessary to file a complaint. A lawsuit may be filed to enforce rights independent of the OCR complaint process.

When: A complaint must be filed within 180 days of the last act of discrimination. If more time has elapsed, the complainant may file a waiver.

Procedure: A complainant may file a complaint following the grievance policy of the individual institution prior to filing a complaint with OCR, but this is not required. The complaint with OCR must be filed within 60 days after the internal grievance is filed.

How to file:

- **Online:** <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>
- **Mail:** Office for Civil Rights, US Department of Education 400 Maryland Avenue, SW, Washington, DC 20202-1100
- **Facsimile:** (202) 453-6012
- **Email** ocr@ed.gov.
- **NY office:**
New Jersey, New York, Puerto Rico, Virgin Islands
Office for Civil Rights,
New York Office
U. S. Department of Education
32 Old Slip, 26th Floor
New York, NY 10005-2500
Telephone: (646) 428-3800
Facsimile: (646) 428-3843
[Email: OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

Complaint Form: You may use OCR's [Discrimination Complaint Form](#) or write your own letter including:

- "The complainant's name, address and, if possible (although not required), a telephone number where the complainant may be reached during business hours;
- Information about the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required);
- The name and location (city and state) of the institution that committed the alleged discriminatory act(s); and
- A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination."ⁱⁱ

OCR Can Impose Sanctions on out of Compliance Federally Funded Institutions

In the event that it is determined that a school district is not complying with the Act, OCR will attempt to negotiate corrective action from the school district. However, should negotiation fail to initiate corrective action, OCR may take enforcement action including,

"(1) initiate administrative proceedings to terminate Department of Education financial assistance to the recipient; or (2) refer the case to the Department of Justice for judicial proceedings."ⁱⁱⁱ

Students with Disabilities Rights under Section 504

Section 504 of the Rehabilitation Act of 1973 (the Act) was enacted to secure equal access to public education for students with disabilities. Students with disabilities are guaranteed equal access to free appropriate public education (FAPE) and services in all programs that receive federal financial assistance.^{iv}

Students with disabilities have the right to receive other “education services designed to meet the individual education needs of students with disabilities as adequately as the needs of nondisabled students are met.”^v

When a student is evaluated and a determination is made that he/she has a disability protected under the Act, a 504 plan is developed and services that would benefit the student are identified and provided. These services are deemed necessary for the student to be able to receive FAPE on par with a student without a disability. Therefore, when students with disabilities are denied access to these services, they are denied FAPE. Requiring parents to home school is not an adequate alternative because while home schooling could be deemed an appropriate education, it does not meet students with disabilities needs in order to be able to receive FAPE when additional services are not provided.

The Act, designed to prevent discrimination against people with disabilities, provides procedural safeguards that a federally funded institution (hereinafter referred to as school) must follow in order to assure that all students have access to FAPE.

When a student with a disability is unable to get services as provided for in his/her 504 plan because he/she is repeatedly sent home early from school, for example, due to a behavioral problem, a complaint can be made that a violation of the Act has occurred.^{vi} If the student is not in school, he/she is not able to receive services provided for under his/her 504 plan. It follows then, that when students with disabilities are denied services under their 504 plans because they are shut out of school due to their vaccination status, that they are being denied their rights under the Act.

On the other hand, an argument can be made that the Act grants students with disabilities equal and not greater access to FAPE than students without disabilities. Accordingly, if all unvaccinated students, regardless of their disability status, are denied access to FAPE, then it is not discriminatory to deny students with disabilities FAPE which may also include educational services. However, the Act was created to protect the rights of students with disabilities and provides safeguards to protect their interests with regard to access to FAPE. Students without disabilities are not covered under the Act. Accordingly, students with disabilities require greater protection under the law in order to have the opportunity to have access to FAPE.

The Act sets forth,

“A school district must conduct or arrange for an individual evaluation at no cost to the parents before any action is taken with respect to the initial placement of a child who has a disability, or before any significant change in that placement.”^{vii}

Denying student’s entrance to school due to their vaccination status would likely be considered action that results in a significant change in placement for students with disabilities because they are potentially kept out of school for a significant period of time. OCR considers an exclusion from the educational program of more than 10 consecutive school days to be a significant change in placement.^{viii}

The Act provides that a student with disabilities must be evaluated and a 504 plan set in place. The needs of each individual student with disabilities must always be taken into consideration when decisions are made that would affect a student’s access to FAPE.

A decision made even for administrative convenience would be a violation of the Act. For example, if a school, purely for administrative purposes, required students in wheelchairs to leave class early in order to get on a school bus, it would be a violation of the Act because nondisabled students would not have the same early departure requirements. Even when a decision is made for a nondiscriminatory purpose, if it deprives a student with a disability equal access to FAPE, it may be deemed a violation of the Act.^{ix} Therefore, even if students with disabilities are kept out of school for a reason deemed nondiscriminatory such as their vaccination status, if it denied them access to FAPE, it may be deemed a violation of the Act.

In the same school bus example above, the Act would be violated because all students in wheelchairs would be affected, and each individual student’s needs were not evaluated in making the determination that all students in wheelchairs must leave class early to get on a bus.^x In the same vein, when a group of students with disabilities are denied entrance to school due to their vaccination status, a blanket decision is being made without taking into consideration each individual student’s best interest with regard to access to FAPE and may be a violation of the Act.

The Act sets forth,

“To be appropriate, education programs for students with disabilities must be designed to meet their individual needs to the same extent that the needs of nondisabled students are met. An appropriate education may include regular or special education **and**

related aids and services to accommodate the unique needs of individuals with disabilities.”^{xi} (emphasis added)

After it is determined whether it is a violation under the Act to keep students with disabilities out of school due to their vaccination status, the next question is whether they are entitled to receive aids and services as set forth under the Act.

The Act further states,

“The quality of educational services provided to students with disabilities must equal the quality of services provided to nondisabled students.” This includes, “an opportunity to participate in nonacademic services that is equal to that provided to persons without disabilities. These services may include physical education and recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school, and referrals to agencies that provide assistance to persons with disabilities and employment of students.”^{xii}

The Act provides for health services for students with disabilities to ensure that they are provided with an equal quality of education to that provided to nondisabled students. The health services provided to students with disabilities is not necessarily limited to select services that would allow the student to attend a particular school, rather, it encompasses health services that would benefit the student with disabilities to have access to FAPE.

The Supreme Court defined the term services under the Individuals with Disabilities Education Improvement Act ("IDEA"),

"As a general matter, services that enable a disabled child to remain in school during the day provide the student with the meaningful access to education that Congress envisioned." *Garret F. ex rel. Charlene F.*, [526 U.S. at 73](#) (internal quotation marks omitted). Related services therefore include a range of supportive services, such as transportation, speech pathology and audiology services, psychological services, physical and occupational therapy, therapeutic recreation, social work services, counseling services, and diagnostic and evaluative medical services. *Id.*; [see 20 U.S.C. § 1401\(26\)](#), (33). *R. A-G v. Buffalo City Sch. Dist. Bd. of Educ.*, 12-CV-960S, at *2-3 (W.D.N.Y. Jun. 30, 2013) (emphasis added)

In order for students with disabilities to have access to FAPE as Congress envisioned, they should receive services as set forth in the Act regardless of where they are able to attend school.

The school has an obligation to ensure that students with disabilities receive FAPE even if the school itself cannot provide same.

“If a recipient is unable to provide a free appropriate public education itself, the recipient may place a person with a disability in, or refer such person to, a program other than the one it operates.”^{xiii}

When vaccine exemption laws are repealed or exemptions are denied, a school is no longer able to provide an education to students with disabilities with certain vaccination status. Therefore, the school has a duty to place these students in an alternative school setting.

The Act provides that,

“A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.”^{xiv}

This section clearly sets forth that the school “remains responsible for” ensuring that the student with a disability receives the services he/she needs if that student is placed elsewhere. Accordingly, when students with disabilities are denied access to public school due to their vaccination status, and thereby lose services under their 504 plan, the school should remain responsible for ensuring that the students receive services in another environment.

An argument could be made that because the school does not need to place students without disabilities in another school setting, requiring placement of students with disabilities would give students with disabilities an advantage rather than equal access to FAPE. However, students with disabilities would not necessarily have the ability to attend another school as easily as a nondisabled student as they might need accommodations in order to have access to FAPE. Being denied entrance to public school inherently disadvantages students with disabilities more than nondisabled students and this is contrary to the purpose of the Act.

Because students with disabilities are being denied services they need in order to have access to FAPE provided under the Act, in practical effect the removal of vaccine exemptions disproportionately affects students with disabilities greater than students without disabilities even if the change in the law does not make such a distinction.

Accordingly, students with disabilities have valid complaints that their rights under the Act are violated due to the removal or denial of vaccine exemptions and could consider filing a complaint with OCR.

ⁱ This reference is for educational purposes only and is not intended to be construed as legal advice or a guarantee of a specific outcome.

ⁱⁱ US Dep. of Education. Office for Civil Rights. [How to File a Complaint with the Office of Civil Rights.](#)

ⁱⁱⁱ US Dep. of Education. Office for Civil Rights. [Protecting Students with Disabilities.](#)

^{iv} Disability Rights & Educational Defense Fund. [Section 504 of the Rehabilitation Act of 1973.](#)

^v Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.

^{vi} US Dep. of Education. [Office for Civil Rights. Parent and Educator Resource Guide to Section 504 in Public and Secondary Elementary Schools.](#) Dec. 2016

^{vii} *ibid*

^{viii} US Dep. of Education. [Office for Civil Rights. Parent and Educator Resource Guide to Section 504 in Public and Secondary Elementary Schools.](#) Dec. 2016

^{ix} *Ibid*

^x *Ibid*

^{xi} US Dep. of Education. [Free Appropriate Public Education for Students with Disabilities: Requirements Under Section 504 of The Rehabilitation Act of 1973.](#) August 2010.

^{xii} *Ibid*

^{xiii} *Ibid*

^{xiv} *Ibid*