



New Guidance from OCR for K-12 Schools regarding COVID-19 and Civil Rights

Many schools around the state have returned, or will soon return, to some form of in-person learning. No doubt, this development in our new-normal raises many challenging legal and practical issues. Last week, the U.S. Department of Education Office for Civil Rights (“OCR”) released new technical assistance in the form of a [Q & A document](#) to help schools provide the “full benefit of educational opportunities for all students” while meeting the requirements of Federal civil rights laws.

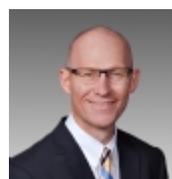
Students with Disabilities

While emphasizing that schools must continue to comply with IDEA, Section 504, and Title II of the ADA, OCR stresses the importance of flexibility in continuing to deal with challenges related to COVID-19. The general tone of the guidance conveys an expectation that schools make documented “good-faith efforts” to satisfy legal requirements “while also taking into consideration the health, safety, and well-being of all their students and staff.”

A few of the key points include:

- *Individualized Determinations*—Schools may not limit or reduce services across the board for students with disabilities. The guidance emphasizes repeatedly that decisions regarding Section 504 and IEPs must be made on an individual basis, including when deciding whether to prioritize in-person learning for students with disabilities. (Qs. 2, 4, 5 & 8.)
- *Waivers*—Schools may not require parents of students with disabilities to waive any rights under section 504, as a condition of receiving online/distance services. (Q. 9.)
- *Face Coverings*—OCR recognizes that some students may have “extreme sensory issues” or other disability-related needs that make it difficult for them to wear a mask. Schools should make reasonable accommodations to face covering policies when necessary to avoid discrimination, while doing their best to make any modifications consistent with the health and safety of students and staff. (Q. 3.)

Education Law



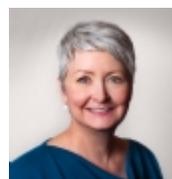
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- *Implementation Failures*—Although a failure to implement aids and services required by a Section 504 plan or IEP may result in a denial of FAPE, not every such failure will constitute a denial of FAPE given the challenges of providing services during the time of COVID-19. OCR will continue to take into consideration all of the relevant circumstances when evaluating complaints. (Q. 5.)
- *Evaluations*—Schools offering only distance learning must continue to conduct evaluations and reevaluations under Section 504 within a “reasonable time frame,” with OCR generally looking to IDEA and state law to determine reasonableness. Parents and schools may agree to waive such timelines under Section 504. (Q. 6.)



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Discrimination Complaints

Schools that are continuing to provide online learning must still accept reports and complaints of discriminatory harassment under Title IX and the Civil Rights Act of 1964. They must also continue investigating pending complaints regardless of whether they are providing in-person or distance learning.

Remember that the Department’s new Title IX Rules, which govern the investigation of sexual harassment allegations and provide due process protections to students accused of sexual harassment, apply to any alleged acts that occurred on or after August 14, 2020. The new Rules require that a school’s grievance process contain reasonably prompt time frames and include a non-exhaustive list of examples of good cause for temporary delays in the grievance process. OCR notes that situations related to COVID-19 may qualify as “good cause” under some circumstances.



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We are Here to Help

As always, should you have any questions or concerns regarding these or other issues, please reach out. We stand ready to help you through this challenging time.

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