



New ADA Regulations and Federal Guidance Regarding Students with Disabilities

The last quarter of 2016 continued to be a busy time for Federal agencies charged with implementing and enforcing the civil rights laws prohibiting discrimination against individuals with disabilities. The Department of Justice issued amended regulations for Title II of the Americans with Disabilities Act ("ADA"), which became effective in October 2016 and the Department of Education issued several important guidance documents regarding special education, Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and the ADA. School districts are encouraged to review the new regulations and guidance described below to ensure continued compliance with Federal disability laws.

AMENDMENTS TO THE REGULATIONS FOR TITLE II OF THE ADA.

In August 2016, the U.S. Department of Justice issued final rules to amend the regulations for Title II of the ADA, which prohibits discrimination against individuals with disabilities in State and local government services including public schools. The regulations went into effect on October 11, 2016. The regulations were amended to incorporate the statutory changes to the ADA set forth in the ADA Amendments Act of 2008, and to provide guidance on how to apply those changes. The amended regulations include a broad definition of "disability" and reinforce that the question of whether someone is "disabled" under the ADA should not demand extensive analysis. Instead, the focus under the ADA should be on whether the public school has complied with the statutory obligations to accommodate individuals with disabilities and not to discriminate.

The amended ADA regulations can be found at:

https://www.ada.gov/regs2016/final_rule_adaaa.html

SIGNIFICANT GUIDANCE FROM THE U.S. DEPARTMENT OF EDUCATION.

In December 2016, agencies in the U.S. Department of Education issued several Dear Colleague Letters ("DCLs") and Frequently Asked Questions ("FAQs") regarding students with disabilities. The DCLs and the FAQs are non-binding and do not create or impose new legal requirements. Rather, they are considered "significant guidance" that provides districts with information to assist them in meeting their obligations under Federal laws, and members of the public with information about their rights under the laws and regulations.

- 1. Discrimination under Title VI in the Administration of Special Education.** On December 12, 2016, the U.S. Department of Education's Office for Civil Rights ("OCR") issued a DCL reminding districts not to discriminate under Title VI of the Civil Rights Act of 1964 on the basis of race, color, or national origin in the administration of special education or related aids and services. The DCL addresses the interplay of Title VI with Section 504, Title II of the ADA, and the Individuals with Disabilities Education Act ("IDEA"), and states that students of color are both over-identified and under-identified as having disabilities and often face delays in obtaining evaluations and special education and related services under Section 504 and the IDEA. The DCL explains that Title VI requires that students of color have equal access to general education interventions and timely referrals for evaluation under Section 504 and the IDEA, and are treated equitably in the evaluation process, the provision of services, and the restrictiveness of their educational environment.

The DCL can be found at: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-racedisc-special-education.pdf>

2. Discrimination in the use of Restraint and Seclusion. On December 28, 2016, OCR issued a DCL and accompanying Fact Sheet on the circumstances under which the use of restraint and seclusion on individuals with disabilities can violate Section 504 and Title II of the ADA. The DCL reminds districts that the repeated use of restraint and seclusion could trigger a duty to evaluate a student under Section 504 or could be evidence that a student already identified as a student with a disability is not receiving a free appropriate public education (“FAPE”). Further, the use of restraint and seclusion for behavior that would not result in restraint or seclusion of peers without disabilities could constitute discrimination prohibited by Section 504.

In addition to understanding the Federal guidance, districts in Wisconsin are reminded that any use of restraint and seclusion must comply with Wis. Stat. sec. 118.305, which sets forth the conditions for the use of restraint and seclusion for all students in Wisconsin, including students with disabilities. (The text of the statute can be found at: <http://docs.legis.wisconsin.gov/statutes/statutes/118/305/>)

The DCL can be found at: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>

The Fact Sheet can be found at: <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf>

3. Students with Disabilities in Public Charter Schools. On December 28, 2016, OCR and the U.S. Department of Education’s Office of Special Education and Rehabilitative Services (OSERS) issued a joint DCL and accompanying FAQs on the rights of students with disabilities in public charter schools under Section 504 and the IDEA. The FAQ regarding Section 504 reiterates that charter school students with disabilities have the same Section 504 rights as other public school students. These students must be provided an equal opportunity to participate in or benefit from the aid, benefits, services, and opportunities provided to nondisabled peers. The FAQ further provides information about the requirements under Section 504 for equal opportunity and nondiscrimination in recruitment, application, and admission to public charter schools.

The FAQ regarding IDEA reiterates that charter school students with disabilities have the same IDEA rights as other public school students. Charter schools have an obligation to provide FAPE as defined in IDEA and have obligations with respect to child find and evaluations, appropriate placement, procedural safeguards, and IDEA funding.

The DCL and FAQs can be found at:

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-charter-school.pdf>

<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf>

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/faq-idea-charter-school.pdf>

GUIDE TO SECTION 504 FROM THE U.S. DEPARTMENT OF EDUCATION.

On December 28, 2016, the U.S. Department of Education’s Office for Civil Rights published the Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools. In this resource guide, OCR highlights key requirements of Section 504 in public elementary and secondary education, explains how Section 504 applies in various hypothetical situations within these schools, and discusses the rights of students with disabilities under two other Federal Laws: Title II of the ADA and IDEA. The resource guide was issued to provide answers to questions that OCR has received and to increase the understanding of the Federal civil rights laws that protect students with disabilities in public schools.

The Guide can be found at: <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>

If you have questions or would like more information about the guidance discussed, please contact one of the attorneys listed below.

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