

SECTION

5



4

SEAS ARKANSAS

EDUCATIONAL CONFERENCE

27 JULY 2023



DIVISION OF ELEMENTARY
& SECONDARY EDUCATION

Equity Assistance Center | 2023



DIVISION OF ELEMENTARY
& SECONDARY EDUCATION



ADE Vision

Every Arkansan is **equitably** prepared, supported, and inspired to succeed in school, career, community, and life.

DESE Mission

The Arkansas Department of Education provides **leadership, support, and service** to schools, districts, and communities so every student graduates prepared for college, career, and community engagement.



Equity Assistance Center (EAC)

vs.

Office for Civil Rights (OCR)

Equity Assistance Center (EAC)

- ADE – Division of Elementary and Secondary Education
- Provides Technical Support and Guidance in Arkansas
- Investigates Complaints
- Liaison with the Office for Civil Rights

Office for Civil Rights (OCR)

- United States Department of Education
- Provides Guidance and Support throughout U.S.
- Ensures Compliance through Reviews and Investigations
- Ultimate Responsibility to Enforce

Equity Assistance Center



This training is technical assistance and guidance.

The EAC cannot provide legal advice.



Every Public School



= EQUITY

ENVIRONMENT

SAFE

CONDUCTIVE
FOR
LEARNING

STUDENT

QUALITY
EDUCATION

FREE FROM
DISCRIMINATION



What is Section 504?

The purpose of this part is...to **eliminate discrimination on the basis of handicap** in any program or activity receiving Federal financial assistance

* Whenever you see the terms “handicap” or “handicapped person”, we are quoting the law directly.

Otherwise, we will use “disability” or “person with a disability” and encourage you to do the same.

Section 504: Intent & Purpose

Discrimination prohibited

a) General. No qualified handicapped person shall, on the basis of handicap, be **excluded from participation in**, be **denied the benefits of**, or otherwise be **subjected to discrimination** under any program or activity which **receives Federal financial assistance**.

Excluded from participation in

Denied the benefits of

Otherwise be subjected to discrimination

Section 504: Intent & Purpose

The **quality** of the educational services provided to handicapped students **must equal** that of the services provided to nonhandicapped students;

- Subpart D 23

To be **equally effective**...it merely must afford **an equal opportunity to achieve equal results**.

...The term **equally effective** [is] **equivalent, as opposed to identical**, [meaning] **adjustments** to regular programs or the provision of **different** programs may sometimes be necessary.

- Subpart A 6

Equal Access & Opportunity

Comparable in Quality & Equally Effective

- NOT identical

Section 504: Intent & Purpose

(a) General. A recipient that operates a public elementary or secondary education program or activity shall provide a **free appropriate public education** to each qualified handicapped person who is in the recipient's jurisdiction

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is **the provision of regular or special education and related aids and services** that (i) are **designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met.**

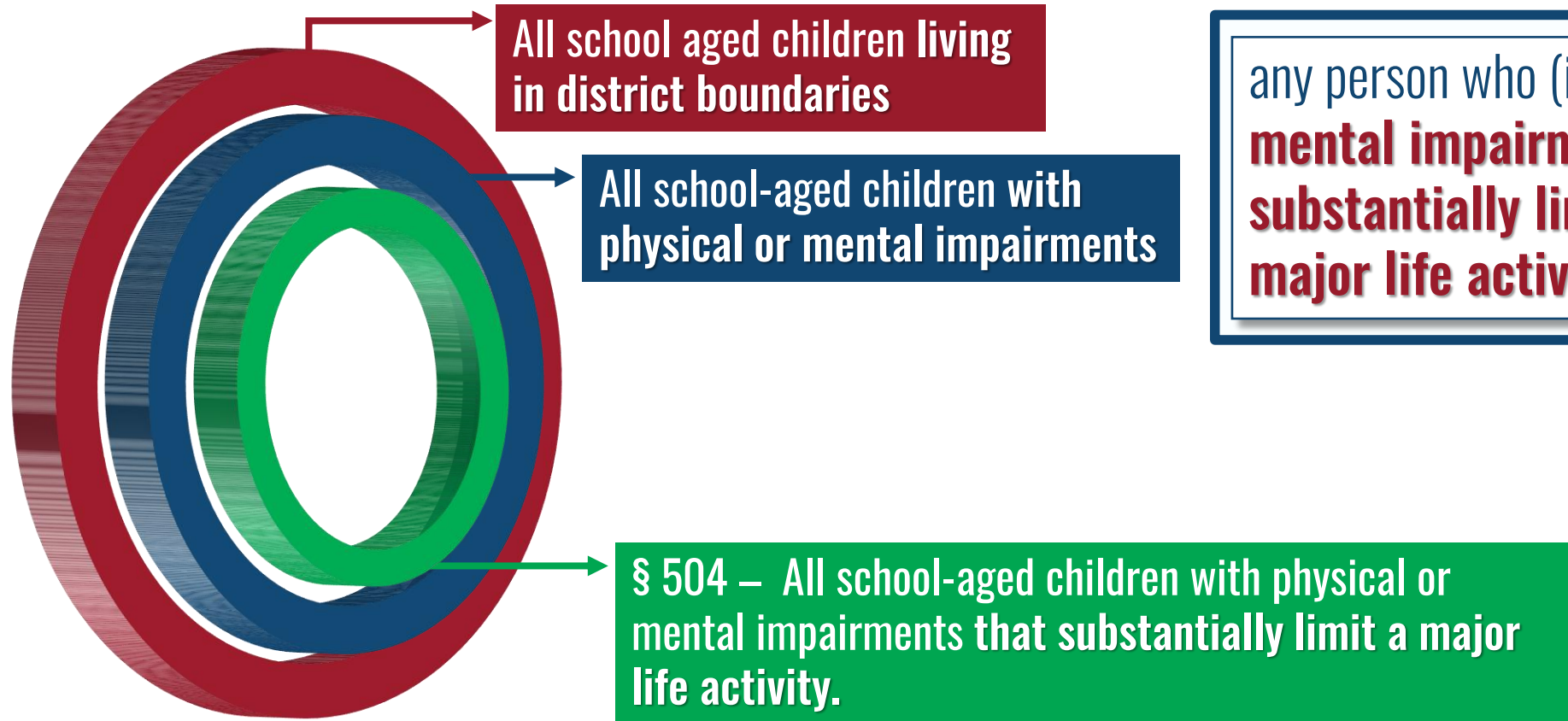
Free and Appropriate Public Education (FAPE)

- Regular or Special Education
- Related Aides and Services
- Needs Adequately Met

Section 504: Disability/Qualified Individual

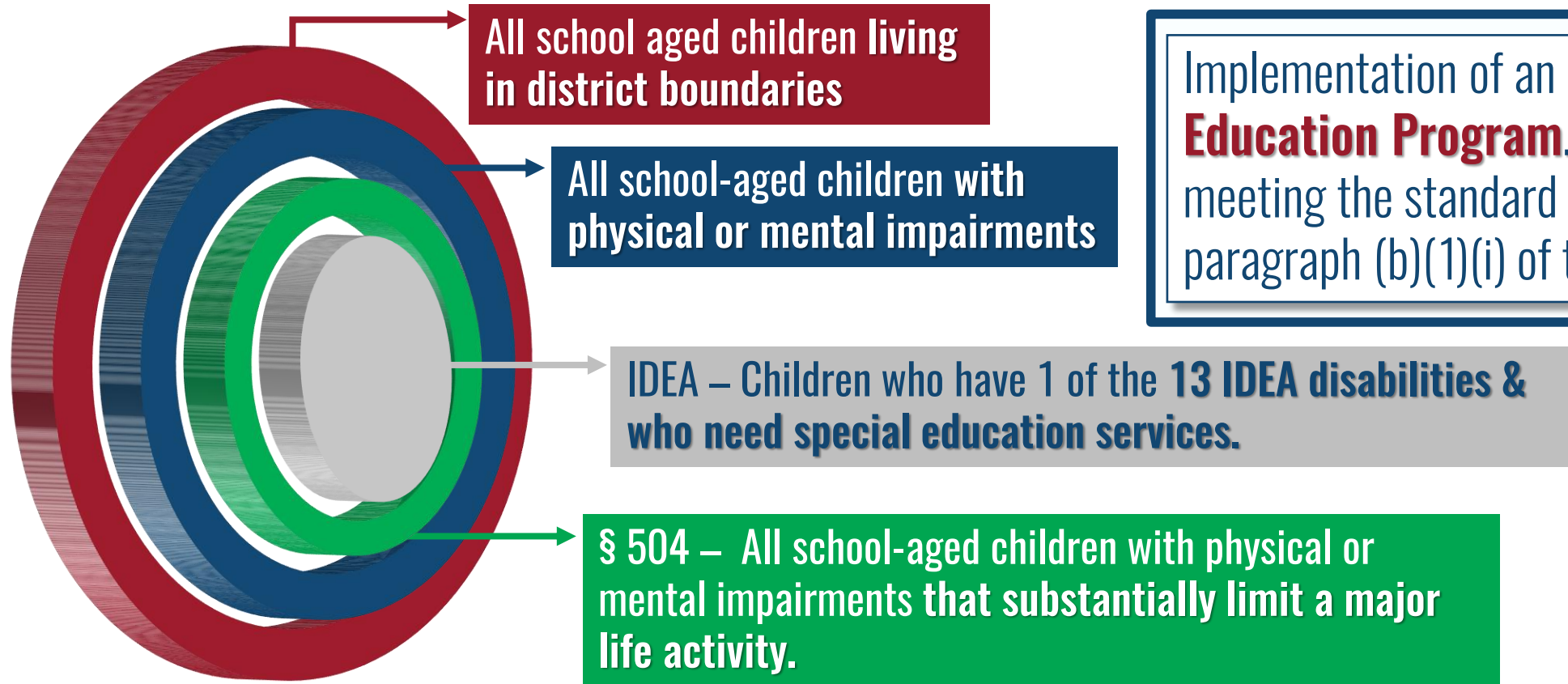
- ...Any person who...has a
 - **Physical or mental impairment**
 - **Which substantially limits**
 - **One or more major life activities.**

Section 504: Qualified Individual



any person who (i) has a **physical or mental impairment** which **substantially limits** one or more **major life activities**.

Section 504: Qualified Individual



Implementation of an **Individualized Education Program**...is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

CHILD FIND



Evaluation

The district must evaluate...

“**any person** who [because of a 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.”

CHILD FIND



Annually

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
- (b) Take appropriate steps to **notify handicapped persons and their parents or guardians** of the recipient's duty

Definition of a Disability

Medical Diagnosis

A **specific diagnosis is not actually necessary** if the school determines a student is substantially limited in a major life activity and that limitation is caused by a mental or physical impairment 34 C.F.R. § 104.3(j), 104.35;

A **medical diagnosis of an illness does not automatically** mean a student can receive services under Section 504

≠ Required

≠ Automatic

Definition of a Disability

Medical Diagnosis

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.

≠ Required

≠ Automatic

- However...
 - Diabetes
 - Epilepsy
 - Bipolar Disorder
 - Autism

Definition of a Disability

Medical Diagnosis

Further, a diagnosis of ADHD is evidence that a student may have a disability. **OCR will presume, unless there is evidence to the contrary, that a student with a diagnosis of ADHD is substantially limited** in one or more major life activities.

*** Diagnosis of ADHD requires a **comprehensive evaluation by a licensed clinician**, such as a pediatrician, psychologist, or psychiatrist **with expertise in ADHD**.

ADHD = Substantially Limited, BUT...

- Comprehensive Evaluation
- Licensed Clinician
- Expertise in ADHD

Definition of a Disability

Substantial Limiting Live Activity

...The student spends **far more time** preparing for class **than other students**...

...a student may have a disability and be eligible for Section 504 services even if his or her disability **does not limit the major life activity of learning**.

Compare to a peer without an impairment

“Life activities” not limited to learning

Definition of a Disability

ADA Amendments Act of 2008

The term "substantially limits" is to be **construed broadly**...

- Requires an **individualized assessment**
- (But) should **not require extensive analysis**.
- An impairment that is **episodic** or in **remission is a disability**

[Make decision] **without regard to the ameliorative effects** of mitigating measures

...does NOT need to

- *prevent*
- *severely restrict*
- *significantly restrict*

Stop arguing about who qualifies and focus on how to not discriminate

Child Find vs. Qualified Individual

CHILD FIND

The district/school must evaluate if it **knows or suspects** a school-aged* person:

- Has a substantially limiting physical or mental impairment

AND

- Needs special education OR related services.

QUALIFIED INDIVIDUAL

The district/school Section 504 team evaluates and determines a school-aged* person:

- Has a substantially limiting physical or mental impairment.

** “school-aged” refers to the age at which a learner can access any of the educational programs the district/school provides, including PreK and Adult Education*

Section 504 : Evaluation/Reevaluation

(a) **Preplacement evaluation.** A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation...**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.**”

(d) **Reevaluation.** A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for **periodic reevaluation** of students who have been provided special education and related services.

Reevaluation prior to change in placement

- Examples
 - Suspension of more than 10 days
 - ALE Placement
 - Switching schools
 - Pulling for services

Periodic reevaluation

Section 504 : Evaluation Team

(c)...a recipient shall...(3) ensure that the placement decision is made by a group of persons, including persons **knowledgeable about the child**, the **meaning of the evaluation data**, and the **placement options**

Knows

- the student
- the evaluation data
- the available placement options

Consider

- teacher, counselor
- nurse, dyslexia specialist, administrator
- administrator, counselor

Section 504 : Evaluation Process

- OCR strongly encourages parent participation
- Parental consent for initial evaluation is required
- Variety of data sources
 - Local school data
 - Grades
 - Attendance
 - Assessments
 - Dyslexia screeners
 - Staff observations
 - Parent/Student observations
 - Doctor recommendations or medical diagnosis

Section 504 Evaluation Qualified Individual?

Based on the data (without regard to mitigating factors)...

- Does the student have a physical or mental impairment?
- Does the impairment limit one or more major life activity?
- Is the limitation substantial? (when compared to non-disabled peers)

“Yes” to all three:

The student qualifies (still qualifies) as a person with a disability under Section 504 and receives the protections such as due process, protection from bullying based on the disability, periodic reevaluation, etc.

“No” to any question:

The student is not (no longer) recognized as a person with a disability under Section 504 law and is exited from the program.

Section 504 Evaluation Supports/Plan?

Based on the data, are there areas, skills, or behaviors where the student needs support to access FAPE?

- Academic or non-academic
- Consider mitigating measures
 - Be prepared if the mitigating measures stop working

“Yes”

The student needs (still needs) a Section 504 plan created that provides supports, services, accommodations, modifications, or exceptions to ensure access to the educational program.

“No”

The student is (continues to be) recognized as a person with a disability person under Section 504 but does not need a Section 504 plan.

Section 504 : Modifications

School staff should note that a student may have a disability and be eligible for Section 504 services, **including modifications**, even if the student earns good grades.

Generally, Section 504 and Title II would require that students with and without disabilities in the same regular education classes in the general education curriculum be **graded using the same standards**.

If a student with a disability...is eligible for FAPE under Section 504 [not IDEA], that student is entitled to the provision of any services the placement team decides are appropriate...regardless of cost or administrative burden, and **especially where such services have been provided to IDEA-eligible students in the past**. Those services can be as varied and as comprehensive as necessary to meet a student's need.

Section 504 : Behavior

...Indications that the student's behavior is out of the expected range...**could trigger a school district's obligation to evaluate** under Section 504.

To provide equal opportunity, schools sometimes must treat students with disabilities differently than students without disabilities...However, a school **may not unnecessarily treat a student with a disability differently based on disability**

A school policy or practice that is **neutral on its face may still have the unjustified discriminatory effect**...even if the discrimination is unintentional

- Behaviors May Trigger Child Find
- Do Not Treat Differently Based on Disability

UNINTENTIONAL DISCRIMINATION IS STILL DISCRIMINATION

Section 504 : Non-Academic Activities

If the modification is necessary, the school district **must allow it unless** doing so would result in a **fundamental alteration of the nature** of the extracurricular athletic activity. A modification might constitute a fundamental alteration if it **alters such an essential aspect of the activity or game that it would be unacceptable even** if it affected all competitors equally (such as adding an extra base in baseball).

MODIFICATIONS REQUIRED UNLESS...

- Fundamentally alter nature of activity
- Provide a Competitive edge
- Give an Unfair advantage

MUST HAVE EVEN-HANDED RESTRICTIONS



Section 504 : Targeted Action Plan

A **written Section 504 Plan** is often a useful way to document that the school district engaged in a process to **identify and address the needs of a student** with a disability and to communicate, to school personnel, the information needed for successful implementation.

- Removes barriers
- Support the major life function being limited & other individualized needs
- Individualized student policy
- CLEARLY & SPECIFICALLY WORDED

Section 504 : Targeted Action Plan

School districts must make decisions regarding the needs and placement of a student with a disability on an individual basis, **rather than based on concerns about the costs of providing the related aids or services.**

...neither the **fundamental alteration** nor **undue burden** defense is available in the context of a school district's **obligation to provide FAPE** under the IDEA or Section 504.

- Provide services based on need NOT costs
- Undue Burden/Fundamental Alteration DOES NOT APPLY to FAPE

Disability vs. Discrimination

Reevaluation Requirement

A recipient...shall conduct an evaluation...before taking any action with respect...**any subsequent significant change in placement.**”

OCR considers the following to be “significant [changes] in placement.”

- An exclusion from the educational program of more than 10 consecutive school days.
- A series of short-term exclusions...if the short-term exclusions total more than 10 school days and create a pattern of removal.

Disability vs. Discrimination

Manifestation Determination

Reevaluation

- Describe the disability and how it limits the student
 - *Is there a missed/undiagnosed impairment?*
- Describe the code of conduct violation and proposed action
- Consider various sources of data
 - Code of conduct documentation
 - Referral documents
 - Witness statements
 - Past evaluation data
 - Parent/Teacher input
- Is there a pattern of the behavior?
- **WAS THE CONDUCT CAUSED BY OR DIRECTLY AND SUBSTANTIALLY RELATED TO THE DISABILITY AND ITS LIMITATIONS?**

Section 504 : Bullying

Schools also have responsibilities under Section 504's FAPE requirements when a student with a disability is **harassed or bullied on any basis**...because the **bullying or harassment can result in a denial of FAPE** [when] the effects of the bullying include adverse changes in the student's academic performance or behavior

If the school has reason to suspect the student's needs have changed, the **Section 504 team must determine the extent to which additional or different services are needed**, ensure that any needed changes are made promptly, and **safeguard against putting the onus on the student with the disability to avoid or handle the bullying.**

- Have the Team Look at Impact of ANY Bullying
- Do Not Leave to Student to Handle or Avoid Bullying

Section 504 : Preparing for Post-Secondary

Participation by a student with a disability in an accelerated class or program generally would be considered part of the regular education...A **school cannot deny that student the needed related aids and services in an accelerated class or program.**

In addition, **federal law requires changes to the testing conditions** that are necessary to allow a student with a disability to participate as long as the changes do not fundamentally alter the examination or create undue financial or administrative burdens.”

A recipient...may not...through contractual...arrangements, on the basis of handicap:(i) Deny a qualified handicapped person the opportunity to...benefit from the aid, benefit, or service;

Provide Accommodations

- Advanced/AP Classes
- Standardized Testing
- Dual-Enrollment Classes
 - **Postsecondary follow Subpart E**
 - Academic Adjustments
 - Not required to provide FAPE
 - **Secondary follow Subpart D**
 - Free and Appropriate Public Education
 - Even for students enrolled in non-FAPE institution as part of your program.



Resources

Office for Civil Rights

Section 504 Law - 34 CFR § 104

- <https://www.ecfr.gov/current/title-34/subtitle-B/chapter-I/part-104>

Parent/Educator Resource Guide

- <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>

FAQ “Protecting Students with Disabilities”

- <https://www2.ed.gov/about/offices/list/ocr/504faq.html>

Questions & Answers on the ADA Amendments Act of 2008

- <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.pdf>

Dear Colleague Letter & Resource Guide on Students w/ADHD

- <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>

Access to Accelerated Programs Guidance (2007)

- <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20071226.pdf>

Dear Colleague Letter on Extracurricular Athletics (2013)

- <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201301-504.html>

Students with Disabilities Preparing for Postsecondary Education

- <https://www2.ed.gov/about/offices/list/ocr/transition.html>

Transition of Students With Disabilities To Postsecondary Education: A Guide for High School Educators

- <https://www2.ed.gov/about/offices/list/ocr/transitionguide.html>

Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504

- <https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf>

Section 504 Discipline Fact Sheet

- <https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-factsheet.pdf>

Equity Assistance Center (EAC)

Section 504 Website

- <https://dese.ade.arkansas.gov/Offices/legal/equity-assistance-center/section-504>

Playlist on the ADE YouTube Channel

- <https://www.youtube.com/playlist?list=PLj2vxyuu8hVBvvg4Hr30Mq7mv5ULHLKBJ>

Other

Policy for Requesting Accommodations for the ACT Test

- <https://www.act.org/content/act/en/products-and-services/the-act/registration/accommodations/policy-for-accommodations-documentation.html>

(CollegeBoard) Accommodations: Requesting Through the School

- <https://accommodations.collegeboard.org/request-accommodations/request/through-the-school>

EQUITY ASSISTANCE CENTER TEAM

Feedback Link: <https://bit.ly/DESE-EAC-Feedback>

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