



Section 504 & Senate Bill 819

Oregon Charter School Conference
December 1, 2023

About ODE

- The Oregon Department of Education works in partnership with school districts, education service districts and community partners to foster equity and excellence for every learner;
- Together, we serve over 560,907* K-12 students and support 75,807* school employees, including teachers, administrators and classified staff;
- We believe every student should have access to a high-quality, well-rounded learning experience; and
- We work to ensure every student in Oregon graduates with a plan for their future.

*Data from October 2021

Meet the Presenters

Marinda Peters

Civil Rights Specialist

Patti Vickers

District Support Specialist,
SB 819 and Section 504

Topics Covered

- Nondiscrimination and Section 504 as disability civil rights law
- Identifying who is protected under Section 504
- Protections and obligations
- SB 819 - Abbreviated School Day Program (ASDP) placements

Jot Down

On a piece of paper, on your computer, or on your phone, complete this sentence frame:

One question I want answered during today's session is....

This training is not intended as legal advice and should not be taken as such; we advise you to consult with your legal counsel before making policy or process changes.

ODE is available to support with individual technical assistance following this training.

Discrimination in Oregon

“Discrimination” means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, **disability**, national origin, race, color, marital status, religion, sex, sexual orientation, or gender identity

OAR 581-021-0045

Upon accepting state school funds, schools/institutions agree to follow state civil rights laws including anti-discrimination laws

Could this be discrimination on the basis of disability?

An elementary student applies for and is accepted and enrolled at a public charter school. Upon enrollment the school becomes aware that the student has epilepsy and may require administration of emergency medication if the student experiences a seizure at school. School officials inform the parents that the school does not employ a school nurse and has no one to delegate nursing services. They cannot guarantee that the student will be safe and healthy at school and as such they advise the parents to enroll the student at their neighborhood school.

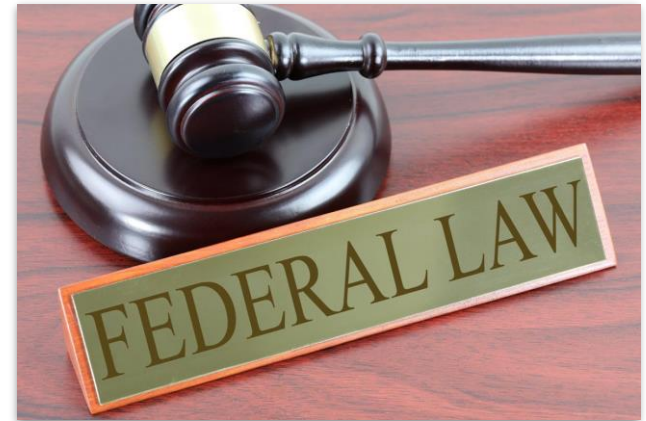
A 6th grade student is enrolled at a public charter school. He has ADHD and struggles with executive functioning and impulsive behaviors. His class is going to outdoor school in a couple of weeks. School officials notify his parents that while he is welcome to go to outdoor school with his classmates, due to his behavior he will only be able to attend if one of his parents acts as his chaperone.

Section 504: Federal Civil Rights Law

Section 504 of the Rehabilitation Act of 1973

Federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: ***"No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ."*** [34 CFR 104.4](#)

The Section 504 regulations require a school district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability [34 CFR 104.33](#)



504 Protections & Obligations

504 Coordinator and discrimination complaint procedures [34 CFR 104.7](#)

- Required notice of this information [34 CFR 104.8](#)

Required process for district response to disability-based harassment [\(OCR, 2014\)](#)

Locating all students with a disability not receiving a FAPE [34 CFR 104.32](#)

(Not just those whose parents requested a 504 evaluation)

Evaluation and placement procedures [34 CFR 104.35](#)

(By a 504 team, no unilateral decision-making)

Access to a FAPE through a 504 plan, if needed [34 CFR 104.33](#)

Parent/student rights and procedural safeguards [34 CFR 104.36](#)

(And notice provided to parents annually +)

Prohibition of school exclusion due to disability-related behaviors (MDR) [\(OCR, 2022 p. 14\)](#)

Institutions Responsible for Section 504

Any institution receiving federal funds or partners with an institution receiving federal funds, like:

- Public schools
- Public charter schools
- Magnet programs
- After school programs
- Athletics (OSAA)
- Nutrition Services
- Transportation/bus services
- Colleges and universities



Upon accepting federal funds, schools/institutions agree to follow federal civil rights laws including Section 504

Section 504 and Charter Schools

Know Your Rights: Students with Disabilities in Charter Schools (OCR, 2016)

Charter school students with disabilities (and those seeking to attend) have the **same Section 504 rights as other public school students with disabilities**. Among other things, these rights include: a free appropriate public education (FAPE); equal treatment and nondiscrimination in nonacademic and extracurricular activities; and accessibility (such as entrance ramps for people who use wheelchairs).

Charter school's admission criteria **may not exclude** or discriminate against individuals on the basis of disability, and the school may not discriminate in its **admissions** process.

During the admissions process, a charter school generally **may not ask a prospective student if he or she has a disability**.

After enrollment, a charter school may ask if a student has a disability, which includes, e.g., whether a student has an individualized education program (IEP) or Section 504 plan.

A charter school **may not counsel out**, i.e., try to convince a student (or parents) that the student should not attend (or continue to attend) the school because the student has a disability

When 504 Protections are in Place

Protections are in place in academic and nonacademic settings (34 CFR 104.34)

For example:

- Class time
- AP and advanced courses
- Breakfast/Lunch
- Free time
- After school activities
- Athletic events
- Field trips
- School events

A school cannot deny access of benefit from any part of the student's "education"



Students Protected Under Section 504

A student determined to:

- Have a physical or mental impairment
- That substantially limits
- One or more major life activities

OR... Have a record of such an impairment

OR... Be regarded as having such an impairment

[34 CFR 104.3\(j\)](#)

The impairment can be temporary (case-by-case); episodic, in remission, and mitigating measures cannot be considered when determining the level of impairment (except regular eye glasses)

Defining Substantial Impairment

Substantial

Condition under which an individual can perform a major life activity as compared to the average person in the general population who can perform the same activity

Consider time/effort it takes to perform the MLA

Impairment & MLAs

Non-exhaustive

Do not need to be “educational” activities

Are these Students Likely 504 Eligible?



A kindergarten student is on the autism spectrum. He is above grade level in reading and math. He experiences dysregulation when there are changes in school routines and when he is asked to transition away from a preferred activity.

A middle school student has insulin-dependent diabetes. She is able to self-monitor. She uses an insulin pump and a cell phone app to view and share with her parents her continuous glucose monitoring (CGM) data and to track her carb intake.

A high school student has epilepsy. He takes prevention medication for his condition and the rate of seizures has decreased over time. He has only had three seizures this school year and only one occurred at school during an after school club.

Important Updates

Minor revision of the state 504 manual and updated forms

Medicaid reimbursement

Proposed rule update coming soon

More training opportunities:

- Monthly webinars
- Open office hours
- Listserv with updates



Abbreviated School Day Programs (SB 819)

Setting the Stage

Students & Families

Equal Access & Disability Civil Rights

- All students have the right to a full school day
- Removal from school is neither a support nor a service
- ASDP is only by parent choice - informed and ongoing consent

School District

Investigation

If Department of Education receives a complaint or otherwise has cause to believe a school district is not in compliance

Enforcement

- Compensatory education
- Withholding of state school funds
- Superintendent TSPC discipline

Abbreviated School Day Programs: Equitable Access to Instruction

- Changed the definition of student with a disability
- Changed the definition of Abbreviated School Day
- Changed the definition of Instruction and Educational Services
- **Requires parent consent**
- Requires significant documentation
- Requires regularly scheduled mandatory meetings
- Has built in accountability requirements
- Requires superintendent review

Abbreviated School Day Program: SB 819's Language

Student with a disability: A student who is eligible for special education, eligible for a 504 plan, or child find

Abbreviated school day program means an education program: In which a school district restricts access for a student with a disability to hours (*or fraction of an hour*) of instruction or educational services to less than the number of hours of instruction or educational services that are provided to the **majority of other students who are in the same grade within the student's resident school district**; and

Meaningful access means access to full-time, quality instruction or educational services that is delivered by:

- *A qualified licensed teacher; or*
- *Qualified classified staff who are under the direct supervision of a qualified licensed teacher; and*
- *Synchronous, unless the instruction or educational services are provided by a virtual public charter school in compliance with ORS chapter 338.*

Results in a student with a disability having an abbreviated school day **for more than 10 school days per school year.**

Definitions of Synchronous and Asynchronous

Synchronous Instruction

Synchronous instruction and educational services mean simultaneous interactions between a qualified licensed teacher, or qualified staff under the direct supervision of a qualified licensed teacher, at the same time, either in person or through the use of an interactive technology. This may include audio only, video only, or audio and video. Key to the definition of synchronous is the opportunity for interaction between the staff and the student that occurs in or near real time, allowing for feedback and adjustments.

Asynchronous Instruction

Asynchronous instruction and educational services are flexible non-simultaneous approaches using audio, video, and learning platforms. Key to the definition of asynchronous is that there is limited or no opportunity for interaction between the staff and the student that occurs in or near real time.

Important Implications

For students who are on a Section 504 plan, asynchronous instruction and educational services provided during the school day **cannot be counted as instruction or educational services and may likely constitute an abbreviated school day. The only exception to this = VIRTUAL public charter schools operating in compliance with ORS Chapter 338.**

School districts should note that this could include:

- Credit recovery
- Elective offerings
- Other online instruction or educational service offerings



Considering the Use of Abbreviated School Day Programs

- School districts should closely collaborate with parents or foster parents to address the individual needs of students
- School districts should consider all available data and information sources that could inform the need for an ASDP, including but not limited to:
 - recommendations provided by medical and psychiatric providers,
 - doctor's orders,
 - mental health treatment plans, and
 - chronic disease management plans

SB 819 Abbreviated School Day Program (ASDP) Program Meeting Requirements

Note: These are general steps for a training overview. Please fully review SB 819 and ODE guidance for comprehensive step by step requirements

<p><u>Initial placement</u> on abbreviated school day program</p>	<p><u>First review meeting</u> held between 25-35 calendar days after initial placement</p>	<p><u>Subsequent review meetings</u> no less frequently than 30 calendar days <i>(up to every 90 day (IEP)/ annually (504)with parent consent)</i></p>
<ol style="list-style-type: none"> 1. Document reasonable efforts to provide meaningful access to the same number of hours of instruction and educational services 2. Obtain signed acknowledgement prior to discussion of ASDP 3. Ensure required parent participation 4. Hold 504 Meeting 5. 504 Team recommends ASDP 6. Document required elements for initial placement on ASDP 7. Obtain parent consent <p>Oregon Department of Education</p>	<ol style="list-style-type: none"> 1. Before the meeting send written notice of students rights as outlined in SB 819 alongside the meeting notice 2. Obtain signed acknowledgement 3. Ensure required parent participation 4. Review the placement including required elements of SB 819 5. Obtain parent consent 6. Document required elements for the ASDP review meeting 7. With parent consent determine the ASDP meeting cadence in alignment with SB 819 requirements 	<ol style="list-style-type: none"> 1. Schedule the next review meeting no later than the timeframe of which the parent consented 2. Before the meeting send written notice of students rights as outlined in SB 819 alongside the meeting notice 3. Obtain signed acknowledgement 4. Ensure required parent participation 5. Review the placement including required elements of SB 819 6. Obtain parent consent 7. Document required elements for the review meeting 8. With parent consent determine the ASDP meeting cadence in alignment with SB 819 requirements

Meeting Frequency

Initial abbreviated school day program placement 504 team meeting with prior notification of student's right to access a full school day program

No fewer than 25 calendar days and no more than 35 calendar days after the initial placement on the abbreviated school day program.

No less frequently than once every 30 calendar days thereafter

OR with parent written consent, up to once every year

If meeting less frequently than every 30 days, 504 team meeting must be held within 14 calendar days of a parent or foster parent requesting a meeting

Parent Choice

- When a parent chooses to have their child with a disability attend a school of choice that results in the student not having meaningful access to the same number of hours of instruction and educational services as the majority of students in their same grade level in their resident district, it would constitute an abbreviated school day program under SB 819.
- In those instances, the requirements of SB 819, including the need for informed and written consent and regular IEP or 504 team meetings, would apply.

Ensuring Nondiscrimination when Applying SB 819

Denying a student with a disability access to a program/school/class, etc. on the basis of their disability could be **discrimination**.

To universally decide that no student with a disability can participate in a program because it fits the ASDP definition under SB 819 may be against federal and state civil rights laws and districts' nondiscrimination policies.

This includes access to (but not limited to) public charter schools, hybrid classes, programs of study, electives, and rights enjoyed by nondisabled peers.

A discrimination complaint may be filed at the local level and appealed at the state level. Complainants can also file at the federal level with the US DOE Office for Civil Rights (OCR)

SCENARIO and Discussion

Andrea is a 7th grade student with a disability under Section 504. She has a diagnosis of anxiety and has been on a 504 Plan since 4th grade. In October of this year, Andrea received 12 consecutive days of out of school suspension as the result of a fight. When she returned to school, the school principal informed her and her parents that she would not be allowed to take PE at the end of the day as this is where the fight took place. This would result in Andrea having only six classes per school day.

Group Discussion:

How does this plan relate to SB 819?

Can the school implement the plan as suggested?





Questions?

Did we answer the question you jotted down at the beginning of this session?

Reach Out & Stay Informed

Marinda Peters, Section 504 and Disability Civil Rights: marinda.peters@ode.oregon.gov

Patti Vickers, SB 819 and Section 504: patricia.vickers@ode.oregon.gov

ODE SB 819 Questions Email: ODE.SB819Questions@ode.oregon.gov

[Section 504 ODE Webpage](#)

[SB 819 ODE Webpage](#)

[SB 819 and Public Charter Schools FAQ](#)