

State Investigations of Section 504 Complaints in Schools

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Issue

Which states have a process for state-level investigations to address complaints of violations of Section 504 of the federal Rehabilitation Act of 1973, as amended ([29 U.S.C. § 794](#))?

Summary

Section 504 of the federal Rehabilitation Act of 1973 prohibits discrimination against people with disabilities in programs that receive federal financial assistance. In the education context, this applies to schools and school districts that receive federal financial assistance, essentially all public schools (and most private schools). This law places the burden of complaint investigation on the school district or school that receives the federal assistance and also permits parents or guardians of students to file a (1) complaint with the federal government or (2) civil action in federal court. At the federal level, the Office of Civil Rights (OCR) within the U.S. Department of Education enforces Section 504.

To be protected under Section 504, a student must be determined to (1) have a physical or mental impairment that substantially limits one or more major life activities; (2) have a record of an impairment; or (3) be regarded as having an impairment. Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students who have a physical or mental impairment that substantially limits one or more major life activities ([34 C.F.R. §§ 104.3](#) and [104.33](#)).

In Connecticut, the State Department of Education (SDE) is not involved with investigating 504 complaints. SDE has provided guidance for school districts regarding the local school district's responsibilities for addressing Section 504 concerns.

Through an online statute search, we found five states (Hawaii, Massachusetts, New Jersey, Pennsylvania, and Vermont) that conduct investigations of Section 504 complaints at the state level.

Overview of Federal Law

Section 504 plans are mandated by federal law and federal regulations specify how the law is implemented, including the processes for reporting and resolving complaints ([34 C.F.R. Part 104](#)).

Federal regulations require public schools to provide services and related aid to meet the educational needs of a student with a disability as adequately as those of a student without a disability ([34 C.F.R. § 104.33\(b\)](#)). Examples of services or accommodations include (1) more time to take tests, (2) technology assists to access course material, or (3) physical changes to a room or facility to make it accessible.

Unlike federal special education law, the rehabilitation act makes the entity that receives the federal assistance responsible for establishing a mechanism for resolving disputes that meets federal requirements. The requirements include procedural safeguards that include notice, an opportunity for the parents or guardian of the student to examine relevant records, an impartial hearing with opportunity for participation by the parents or guardian and representation by counsel, and a review procedure ([34 C.F.R. § 104.36](#)). Any recipient of federal funds that has 15 or more employees must designate at least one person to coordinate efforts to comply with this law ([34 C.F.R. § 104.7](#)).

The regulations specifically state that safeguards that comply with those of the federal special education law, the [Individuals with Disabilities Education Act](#) (IDEA), also meet the 504 requirements ([34 C.F.R. § 104.36](#)). IDEA places more burdens on state government and Connecticut is among the states that chose not to merge 504 processes with IDEA processes (see below).

The OCR complaint process is described fully on its [website](#), which allows complaints to be filed online [here](#).

Connecticut

Although several states use their IDEA hearing procedure to also decide Section 504 disputes, Connecticut does not. In a 2009 [Circular Letter](#) to school superintendents (which is still current guidance according to SDE), the education commissioner explicitly stated that while some school districts have confused the hearing processes of the two laws, the IDEA and Section 504 due process systems “are unique and independent of each other.”

Although parents of students with disabilities under Section 504, like those of special education students, have the right to an impartial hearing concerning “the identification, evaluation, or educational placement” of a student with a disability, SDE “does not conduct these hearings; these hearings are the responsibility of the local school district.” The commissioner’s letter also emphasized that the following procedures available to resolve special education disputes under IDEA are not available to resolve Section 504 complaints: state mediation, state advisory opinions, and the state due process hearing and complaint resolution procedures.

Thus, a complaint regarding a Section 504 matter can be filed with the appropriate school district in addition to filing with OCR or federal court.

States That Investigate Section 504 Complaints

Hawaii

Hawaii addresses discrimination against students in stated protected classes, including those with disabilities, through Hawaii Department of Education regulations. The department’s Civil Rights Compliance Branch is responsible for monitoring and investigating complaints ([HI ADC § 8-89-1](#)). The regulations define a “persons with disabilities” the same as does federal law: “persons who have a physical or mental impairment that substantially limits one or more life activities, have a record of an impairment, or are regarded as having an impairment” ([HI ADC § 8-89-2](#)).

In addition to complaints under state authority, the regulations also specifically allow complaints for alleged violations of seven federal laws including Section 504 of the Rehabilitation Act of 1973 and IDEA ([HI ADC § 8-89-2](#)). The state regulations define “discrimination” as “excluding the participation in or denying the benefits of the department’s administration of its educational programs and activities, or otherwise treating a student differently on the basis of a protected class” ([HI ADC § 8-89-2](#)).

The regulations establish a procedure in the public school system for filing and resolving complaints of discrimination, including those regarding disabilities, against a student in any program, activity,

or service of the state education department. Students, parents, or legal guardians may file complaints ([HI ADC § 8-89-1](#)). Employees or volunteers who witness discrimination or harassment of a student can also file complaints ([HI ADC § 8-89-6](#)).

The regulations address the complaint investigation procedures including: how complaints are taken, assessing complaints to determine applicability under the law, considering requests for immediate interventions, conducting the investigation with an impartial investigator that results in a final report, and the potential ordering of appropriate action, including steps to end the discrimination and prevent its reoccurrence ([HI ADC § 8-89-6](#)).

The regulations specify that they cannot be construed to limit or waive a complainant's right to seek relief provided under other state or federal law ([HI ADC § 8-89-9](#)).

Massachusetts

In Massachusetts, the Division of Administrative Law Appeals' [Bureau of Special Education Appeals](#) conducts due process hearings and issues rulings and decisions on eligibility, evaluation, placement, individualized education programs (IEPs), and special education services and procedural protections for students with disabilities, including Section 504 accommodations. The division's website states its authority comes from both state and federal law, including IDEA and Section 504. The bureau also provides mediation and other forms of alternative dispute resolution for disputes between and among parents, school districts, private schools and state agencies concerning special education services as required under IDEA and Section 504 ([MGLA 71B § 2A](#)).

New Jersey

In New Jersey, due process hearings for Section 504 issues are generally handled in the same way as special education due process requests, except some provisions of the special education due process procedures do not apply to Section 504 complaints ([NJAC 6A:14-2.7\(w\)](#)). The complaints are handled by the Office of Special Education Policy and Dispute Resolution in the New Jersey Department of Education.

When the office receives a request for a due process hearing, the request must be processed and, as appropriate, mediation and a due process hearing in accordance with state regulations will be made available to the parties ([NJAC 6A:14-2.7\(g\)](#)).

While Section 504 hearing requests are generally handled the same way as special education hearing requests, the regulations specifically state that one method of conflict resolution, a pre-

hearing resolution meeting, is not part of the 504 process. Also, there is no 10-day deadline for a response to a request for a due process hearing ([NJAC 6A:14-2.7\(w\)](#)).

Pennsylvania

Pennsylvania state regulations specify that school districts must comply with Section 504 and places specific responsibilities on the state education department to satisfy these requirements ([22 Pa. Code § 15.1](#)).

The state government must act on complaints of parents or guardians who feel the local school district is not meeting its responsibility to comply with the federal law. It specifically states:

Parents may file a written request for assistance with the [state education] department if one or both of the following apply:

- 1. The school district is not providing the related aids, services and accommodations specified in the student's service agreement.*
- 2. The school district has failed to comply with the procedures in this chapter ([22 Pa. Code § 15.8](#)).*

Accordingly, the department investigates and responds to requests for assistance and, unless exceptional circumstances exist, responds in writing to the parents and the school district within 60 calendar days of receiving the request. The response to the parents' request must be in the parents' native language or mode of communication ([22 Pa. Code § 15.8](#)).

Vermont

Under Vermont state regulations, conflicts and alleged violations under Section 504 can be resolved through due process hearings in the same manner as for a special education due process hearings in Vermont. All the same procedures apply for Section 504 hearings. Vermont's Agency of Education processes and hears special education-related complaints (see [Vt. Admin. Code § 7-1-5:2365.1.6](#)).

The hearing officer may award declaratory and injunctive relief but not damages, costs, or attorney's fees. The regulations note that, in addition to, or in lieu of a due process hearing, a person may file a complaint with the federal OCR in Boston (see [Vt. Admin. Code § 7-1-1A:1253](#)).

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