

YOUNG, MINNEY & CORR, LLP  
**LEGAL ALERT**



**New Guidance Released by U.S. Department of Education for  
Issues Related to Students with Disabilities**

The U.S. Department of Education (“Department”) issued new guidance regarding the federal civil rights laws that prevent the discrimination of charter school students on the basis of disability.

The Office of Civil Rights (“OCR”) and the Office of Special Education and Rehabilitative Services (“OSERS”) jointly developed a [Dear Colleague Letter](#) (“DCL”) and two frequently asked questions documents regarding the rights of students with disabilities in public charter schools. The documents provide charter schools with support in the areas of enrollment procedures, accessibility, and nonacademic activities for students with disabilities.

[Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504](#) explains that students with disabilities who attend charter schools have the same rights under Section 504 as public school students with disabilities. For example, a charter school may not ask a prospective student if he or she is a student with a disability as charter schools must be nondiscriminatory in the admissions procedures. Similarly, as explained in the [Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under the IDEA](#), parents and students with disabilities who attend charter schools have all of the rights and protections under the Individuals with Disabilities Education Act that are afforded to public school students and their parents.

OCR also developed a [Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#) (“Resource Guide”) to provide guidance on how to eliminate discrimination on the basis of disability. While the Resource Guide provides an overview of Section 504 of the Rehabilitation Act of 1973 (“Section 504”), it also explains how Section 504 applies in hypothetical situations for charter schools that receive federal financial assistance.

A few key points from the Resource Guide:

1. When determining whether a student has a disability under Section 504, a charter school cannot consider a mitigating measure, such as medication or the use of a wheelchair, when determining how the impairment impacts a major life activity.
2. Charter Schools must not solely rely on good grades to determine that a student is not a student with a disability under Section 504. A student with a disability may succeed academically but may still be substantially limited in a major life activity due to the student’s impairment.
3. Even if a student does not need special education or related aids and services, he or she may still be protected under Section 504 from bullying and harassment based on a disability. Section 504 prohibits disability-based harassment that is serious enough to deny or limit a student’s ability to participate in, or benefit from, an educational program.

OCR also released a [Dear Colleague Letter](#), which includes a question and answer section regarding restraint and seclusion of students with disabilities. As noted in the DCL, some uses of restraint or seclusion can result in discrimination against students with disabilities. Such discrimination is in violation of Section 504. The question and answer document advises charter schools on how to continue to meet their legal obligations to students with disabilities.

A few key points from the DCL regarding restraint and seclusion:

1. A charter school may be found to discriminate in violation of Section 504 when it uses restraint or seclusion by 1) unnecessarily treating students with disabilities in a different manner than students without disabilities; 2) developing policies and procedures that have an effect of discriminating against students with a disability; or 3) denying a student's right to a free appropriate public education under Section 504.
2. OCR previously recommended that charter schools should never use physical restraint or seclusion for disciplinary purposes and should never use mechanical restraint in any situation. Trained school officials may use physical restraint or seclusion only when a student's behavior poses imminent danger of serious physical harm to self or others. *\* Note: State law provides more specific requirements related to emergency behavioral interventions, see Education Code 56520, et seq.*

For additional information, please see:

- [Know Your Rights: Students with Disabilities in Charter Schools](#)
- [Fact Sheet: Restraint and Seclusion of Students with Disabilities](#)
- [Restraint and Seclusion: Resource Document](#)

For additional information on these documents or related California laws and for assistance in creating or updating school policies for alignment, please contact our Office at (916) 646-1400 or via email: Lisa Corr at [lcorr@mycharterlaw.com](mailto:lcorr@mycharterlaw.com), Megan Moore at [mmoore@mycharterlaw.com](mailto:mmoore@mycharterlaw.com), or Brinkley Wilson at [bwilson@mycharterlaw.com](mailto:bwilson@mycharterlaw.com) for assistance.

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