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Fact Sheet: Long COVID under Section 504 and the IDEA

**Office for Civil Rights
Office of Special Education and
Rehabilitative Services**

N/A

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Related Index Numbers

116.10 Child Find

116.25 Evaluations

116.55 Section 504 Plans

175.040 Other Health Impairment

405.036 Eligibility

Ruling

In a Fact Sheet addressing school districts' obligations when students experience post-COVID symptoms, OCR and OSERS stated that districts may need to identify, refer, and evaluate or reevaluate a student with "long Covid" under the IDEA or under Section 504 and develop or revise an IEP, IFSP, or 504 plan for the student. Further, the agencies stated, the determination of whether a child or student is eligible under the IDEA or Section 504 must be made on an individualized basis and utilizing legally compliant evaluation procedures.

Meaning

A student may be eligible under the IDEA or Section 504 based on post-COVID symptoms. In making eligibility decisions based on a student having such symptoms, districts may not depart from IDEA or Section 504 evaluation procedures, which, in part, require the IEP or 504 team to consider a range of relevant information. Districts therefore should not make these determinations based solely on a medical diagnosis, based on a doctor's determination that the student no longer has the virus, or based on evidence that the student had no symptoms during the initial days or weeks after being infected.

Case Summary

Just because a student no longer has COVID-19 or was asymptomatic when he had it, doesn't mean a district can overlook symptoms that remain after the virus' departure from the student's body. OCR and OSERS explained in a Fact Sheet that ongoing symptoms that characterize "long COVID," such as difficulty concentrating, mood changes, and difficulty breathing, may trigger a district's child find obligations under the IDEA or Section 504. The agencies explained that long Covid, according to the CDC, is a wide range of new, returning, or ongoing health problems individuals can experience more than four weeks after being infected. Long COVID, the agencies continued, can result in a combination of various symptoms, including fatigue, difficulty thinking or concentrating, shortness of breath, mood changes, sleep problems, and chest or stomach pain. OCR and OSERS explained that a student experiencing such symptoms may qualify for special education and related services under the IDEA category of OHI, defined in part as "limited strength, vitality, or alertness due to a chronic or acute health problem." For example, the agencies stated, a student who is "experiencing difficulty concentrating and anxiety symptoms related to long COVID may need to receive special education and related services and supplementary aids and services to improve academic engagement during instructional periods, counseling services to address anxiety, and a plan for positive behavioral interventions and supports to promote on-task behavior and adaptive responses to stress triggers." A student eligible under Section 504, OCR and OSERS added, may need a reasonable modification to attendance policies. Moreover, if a student has an existing IEP, IFSP, or 504 plan, that plan may need to be revised to address the student's symptoms. Further, the agencies stated, the above determinations must be made on an individualized basis and in accordance with IDEA or Section 504 evaluation procedures.

Full Text

Long COVID under Section 504 and the IDEA: A Resource to Support Children, Students, Educators, Schools, Service Providers, and Families

Introduction

The COVID-19 pandemic has created significant challenges for schools in meeting the needs of all children and students in early childhood, elementary, secondary, and postsecondary education. These challenges will continue as schools and public agencies¹ seek to ensure support and equity for children and students experiencing the long-term adverse health effects of COVID-19, commonly referred to as long COVID.

This resource is issued jointly by the U.S. Department of Education's Office for Civil Rights (OCR) and the Office of Special Education and Rehabilitative Services (OSERS) to provide information about long COVID as a disability and about schools² and public agencies' responsibilities for the provision of services and reasonable modifications to children and students for whom long COVID is a disability. The discussion here focuses on two Federal laws: Section 504 of the Rehabilitation Act of 1973 (Section 504) and Parts B and C of the Individuals with Disabilities Education Act (IDEA).³

This resource has four sections:

I. Background Information on Section 504 and IDEA

II. What Is Long COVID and What Is Its Impact on Children and Students

III. Protections and Services under IDEA and Section 504 for Children and Students with Long COVID

IV. What to Do If a Child or Student Is Experiencing Long COVID

Additional Resources from the Department of Education

The Department is committed to providing resources to support schools and public agencies in reopening safely and in ways that support equity

among all children and students. To date, the Department has released various important resources to assist schools and public agencies, including the ED COVID-19 Handbook, Volumes I, II, and III;⁴ Questions and Answers on Civil Rights and School Reopening in the COVID-19 Environment;⁵ the Safer Schools and Campuses Best Practices Clearinghouse;⁶ and this resource, which addresses the potential developmental and educational implications of long COVID for children and students⁷ who have this condition.

Please note: Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. The Department has determined that this document provides significant guidance under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007).

I. Background: About Section 504 and IDEA

Section 504 prohibits disability discrimination and ensures that students with disabilities have equal access to educational opportunities. In the education context, this law applies to schools that receive Federal financial assistance from the Department and is enforced by the Department's OCR.

IDEA Part B ensures that a free appropriate public education (FAPE) is available to all children with disabilities residing in the State between the ages of 3 through 21 years, with a few specific exceptions, and including children with disabilities who have been suspended or expelled from school.⁸ Under Part C of the IDEA, infants and toddlers (birth through age 2 years) with disabilities and their families are eligible to receive early intervention services.⁹ OSERS' Office of Special Education Programs (OSEP) administers the IDEA, including the Federal Special Education Grants to States under Part B and Special Education

Grants for Infants and Toddlers under Part C.

II. What Is Long COVID and What Is Its Impact on Children and Students

The U.S. Centers for Disease Control and Prevention (CDC) has identified long COVID as another term for post-COVID conditions.¹⁰ According to the CDC, post-COVID conditions "are a wide range of new, returning, or ongoing health problems people can experience more than four weeks after first being infected with the virus that causes COVID-19. Even people who did not have symptoms when they were infected can have post-COVID conditions."¹¹

Preliminary studies show that children and students of all ages may experience long COVID, which can produce a combination of symptoms, including:¹²

- Tiredness or fatigue
- Difficulty thinking or concentrating (sometimes referred to as "brain fog")
- Headache
- Changes in smell or taste
- Dizziness on standing (lightheadedness)
- Fast-beating or pounding heart (also known as heart palpitations)
- Symptoms that get worse after physical or mental activities
- Chest or stomach pain
- Difficulty breathing or shortness of breath
- Cough
- Joint or muscle pain
- Mood changes
- Fever
- Pins-and-needles feeling
- Diarrhea
- Sleep problems
- Changes in period cycles
- Multiorgan effects or autoimmune conditions

- Rash

As the Departments of Justice and Health and Human Services explain, long COVID can be a disability under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.¹³

III. Protections and Services Under IDEA and Section 504 for Children and Students with Long COVID

A child or student experiencing long COVID or other conditions that have arisen as a result of COVID-19 may be eligible for special education and related services under IDEA and/or may be entitled to protections and services under Section 504. Some children and students who were already identified as having a disability under IDEA and/or Section 504 and who have contracted COVID-19 may experience new or worsened symptoms related to their pre-existing disability, to COVID-19, or to both. If these symptoms persist in the form of long COVID, these children or students may need new or different related aids and services, specialized instruction, or reasonable modifications. Other children or students may be found eligible for services under IDEA and/or Section 504 for the first time because of the adverse impact of long COVID on the child's educational achievement and functioning (IDEA) or if long COVID substantially limits one or more of the student's major life activities (Section 504).

A. Eligibility Under IDEA: To be eligible for special education and related services under Part B, the child must be evaluated and determined to be a child who has a disability and who requires specialized services as defined under IDEA.¹⁴ For example, under the IDEA Part B regulations, a child may be eligible for special education and related services based on having an "other health impairment" if the child has limited strength, vitality, or alertness due to a chronic or acute health problem that adversely affects the child's educational performance.¹⁵ To be eligible for early intervention services under IDEA Part C, an infant or toddler must receive a comprehensive, multidisciplinary evaluation

and meet the State's eligibility criteria.¹⁶ For example, infants with severe post-COVID conditions could, based on evaluation data, have developmental delays that make them eligible for early intervention services.

B. Eligibility Under Section 504: Under Section 504, a person has a disability if they: (1) have a physical or mental impairment that substantially limits a major life activity; (2) have a record of such an impairment; or (3) are regarded as having such an impairment.¹⁷ Major life activities include, for example, breathing and concentrating as well as major bodily functions such as functions of the immune system.¹⁸ A student does not need to be substantially limited in their learning to be eligible for protection and services under Section 504. If a student's long COVID substantially limits one or more major life activities, the student would have a disability under Section 504.¹⁹ This analysis applies to all students, whether in pre-school, elementary or secondary school, or a postsecondary setting.

IV. What To Do if a Child or Student Is Experiencing Long COVID

Early Childhood, Elementary, and Secondary Children and Students

Long COVID impacts children and students in a variety of ways, and therefore, the determination of whether a child or student is eligible for IDEA and/or Section 504 services must be made on an individual basis following existing procedures in those laws and their implementing regulations.

A. Child Find and Evaluation Procedures under IDEA Part C

Child Find is a requirement that States have a system in place to identify, locate, and evaluate all infants and toddlers with disabilities who may be eligible for early intervention services as early as possible. A child suspected of having a disability should be referred as soon as possible, but in no case more than seven days, after the child has been identified.²⁰ With parental²¹ consent, a timely, comprehensive, multidisciplinary evaluation must be

completed, and if the child is determined eligible, a child and family assessment must be conducted to determine the appropriate early intervention services and supports for the child and family. The initial evaluation and the initial assessments of the child and family and the initial individualized family service plan (IFSP) meeting must be completed within 45 days from the date the lead agency or early intervention service (EIS) provider receives the referral of the child. The lead agency or EIS provider must ensure that once the IFSP is developed and the parent consents to services, the IFSP is implemented as soon as possible.

B. Child Find and Initial Evaluation Procedures under IDEA Part B

Similarly, Child Find for IDEA Part B requires public agencies to implement policies and procedures ensuring that all children with disabilities who need special education and related services are identified, located, and evaluated, regardless of the severity of the disability. This includes, for example, children who may have been identified as a child with a disability under the IDEA category of other health impairment as a result of contracting COVID-19 (e.g., long COVID or multisystem inflammatory syndrome in children, known as MIS-C).²² Child Find activities typically involve a screening process to determine whether the child should be referred for a full evaluation to determine eligibility for special education and related services. If the public agency suspects the child may have a disability under IDEA, it must seek the parent's consent to conduct an initial evaluation. That evaluation must be consistent with IDEA's requirements and conducted within 60 days of receiving parental consent or within the State-established timeline. At the completion of the evaluation, a group of qualified professionals and the child's parent determine whether the child is a child with a disability as defined in IDEA and, if yes, identify the educational needs of the child.

C. Evaluation Procedures under Section 504

Under Section 504, schools must conduct an evaluation in a timely manner of any student who needs or is believed to need special education or related services because of a disability.²³ The evaluation of a student must be individualized and not make any conclusions based on the child's diagnosis alone. Once the evaluations are completed, a group of people knowledgeable about the child and the child's evaluation data and placement options (for example, the child's parents, school nurses, teachers, counselors, psychologists, school administrators, social workers, doctors, etc.) reviews the evaluation results.²⁴ Then the group determines the child's placement based on whether the student has a disability and what, if any, supports are needed. For example, a student who has had COVID-19 and who continues to have difficulty concentrating may require an evaluation to determine if the student has a disability and needs special education or related services such as additional time to finish classwork and tests. For students who already receive services under Section 504, schools must provide reevaluations periodically and prior to a significant change in placement.²⁵

D. Eligibility and Implementation under IDEA and Section 504

If the child is eligible for services under Part C of IDEA, an IFSP will be developed by the IFSP Team, which includes the infant's or toddler's parent. For example, an IFSP Team may determine that a toddler with developmental delays as a result of the effects of long COVID may require early intervention services and occupational therapy to address fine and visual motor skills. The IFSP could also include parent services or family-centered interventions to foster social-emotional well-being as the toddler recovers from long COVID. Likewise, a child determined eligible for services under Part B will have an Individualized Education Program (IEP) developed by the IEP Team, which includes the child's parent.²⁶ For example, an IEP Team may determine that a child whose disability meets the definition of other health impairment under IDEA and

who is experiencing difficulty concentrating and anxiety symptoms related to long COVID may need to receive special education and related services and supplementary aids and services to improve academic engagement during instructional periods, counseling services to address anxiety, and a plan for positive behavioral interventions and supports to promote on-task behavior and adaptive responses to stress triggers.

If a student is eligible for services or reasonable modifications under Section 504, schools often record those services and modifications in a document called a Section 504 plan.²⁷ Under Section 504, for example, a group of knowledgeable people may determine that a student requires a reasonable modification to the attendance policy to receive excused absences for long COVID-related illness or medical appointments beyond the initial period of illness.

Postsecondary Education Students

Colleges and universities also have obligations under Section 504 and must provide students with disabilities an opportunity to participate that is equal to that of students without disabilities.²⁸ This obligation extends to students whose long COVID substantially limits a major life activity.

Postsecondary education students who are experiencing long COVID may have a disability; if so, they may require academic adjustments and/or reasonable modifications.²⁹ For example, a student with asthma may experience increased difficulty breathing and new difficulty with walking as a result of long COVID. That student may need a reasonable modification to register early for a class schedule that minimizes the distance between classes.

In the postsecondary setting, Section 504 does not require colleges or universities to identify students with disabilities. Students who require academic adjustments or reasonable modifications may request them; typically, students work with a postsecondary institution's disability services office to identify appropriate modifications.

V. Language Assistance

On request, this publication is available in alternate formats, such as Braille or large print. For more information, please contact the Department's Alternate Format Center at 202-260-0818 or alternateformatcenter@ed.gov. If you have difficulty understanding English and need more information about interpretation or translation services, please call 1-800-USA-LEARN (1-800- 872-5327) (TTY: 1-800-877-8339), email us at Ed.Language.Assistance@ed.gov, or write to U.S. Department of Education, Information Resource Center, 400 Maryland Avenue, SW, Washington, DC 20202.

VI. About the Department of Education's Office of Special Education and Rehabilitative Services (OSERS) and Office for Civil Rights (OCR)

OSERS' mission is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the nation. In implementing this mission, OSERS supports programs that help educate children and youth with disabilities and provides for the rehabilitation of youth and adults with disabilities. OSERS provides a wide array of supports to parents and individuals, school districts, and States in two main areas--special education and vocational rehabilitation--through its two main components: OSEP and Rehabilitation Services Administration. For more information, visit the Department's Office of Special Education and Rehabilitative Services website (<https://www2.ed.gov/osers>).

OCR's mission is to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools. An important OCR responsibility is resolving complaints of discrimination, which can be filed by anyone who believes that an education institution that receives Federal financial assistance³⁰ has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. For more information, visit the Department's Office for

Civil Rights website (<https://www2.ed.gov/ocr>). There, a complaint of discrimination can also be filed (<https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>).

¹The information in this document under IDEA applies to public agencies, which includes State educational agencies (SEAs), local educational agencies (LEAs), educational service agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. IDEA also requires State lead agencies to provide early intervention services for infants and toddlers. This resource refers to all these entities as "public agencies."

²The information in this document regarding Section 504 applies to all schools, which includes public schools and school districts, as well as private schools, public charter schools, and magnet schools, and postsecondary institutions that receive Federal financial assistance from the Department. Although some Section 504 regulatory requirements are different for public and private school recipients, both public and private schools that receive Federal financial assistance from the U.S. Department of Education must comply with Section 504. See, 34 C.F.R. § 104.33 and 39. Section 504 falls under OCR's jurisdiction.

³Another Federal disability civil rights law, the Americans with Disabilities Act (ADA), also applies to schools. Title II of the ADA prohibits disability discrimination by public entities, including public schools. Title III of the ADA prohibits disability discrimination by certain private entities, including certain private schools. OCR shares in the enforcement of Title II of the ADA with the U.S. Department of Justice (DOJ); DOJ has enforcement authority for Title III of the ADA. This document focuses on Section 504 and the IDEA. More information about the ADA is available at: www.ed.gov/ocr and www.ada.gov.

⁴ED Covid-19 Handbook, Strategies for Safely

Reopening Elementary and Secondary Schools, Volume I, available at <https://www2.ed.gov/documents/coronavirus/reopening.pdf>, and Volume II, Roadmap to Reopening Safely and Meeting All Students' Needs available at <https://www2.ed.gov/documents/coronavirus/reopening-2.pdf> and Volume III, Strategies for Safe Operation and Addressing the Impact of COVID-19 on Higher Education Students, Faculty, and Staff available at <https://www2.ed.gov/documents/coronavirus/reopening-3.pdf>.

⁵Questions and Answers on Civil Rights and School Reopening in the COVID-19 Environment, May 2021, available at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-reopening-202105.pdf>.

⁶<https://bestpracticesclearinghouse.ed.gov/>.

⁷For purposes of this document, "students with disabilities" generally refers to the definition of disability found in the Rehabilitation Act of 1973 at 29 U.S.C. § 705(9)(B), (20)(B); see also the Department's Section 504 regulation at 34 C.F.R. § 104.3(j). "Child or children with disabilities" generally refers to the definitions of child with a disability or infant or toddler with a disability in Parts B and C of the IDEA. See 34 C.F.R. § 300.8 (Part B) and 34 C.F.R. § 303.21 (Part C). However, the terms and definitions are not mutually exclusive. All children with disabilities who are eligible for special education and related services under IDEA are protected by Section 504 (but the inverse is not true; not all students protected by Section 504 are IDEA-eligible). See U.S. Department of Education, Office for Civil Rights, Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools (December 2016), available at <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>.

⁸34 C.F.R. Section 300.102(a).

⁹Appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are

homeless children and their families, and infants and toddlers with disabilities who are wards of the State.

¹⁰The Centers for Disease Control and Prevention also recognizes other post-COVID conditions, a series of illnesses resulting in debilitating conditions, that can be similar to long COVID. This guidance may also be applicable to other post-COVID conditions. For example, the CDC has identified a post-COVID condition called Multisystem Inflammatory Syndrome in children (MIS-C).¹¹ MIS-C is a condition where different parts of a child's body can become inflamed, including the heart, lungs, kidneys, brain, skin, eyes, or other organs. Children with MIS-C may have a fever and various symptoms, including abdominal (gut) pain, vomiting, diarrhea, neck pain, rash, bloodshot eyes, or feeling extra tired. Currently, it is unknown how long multiorgan effects might last and whether the effects could lead to chronic health conditions. MIS-C, mental health conditions, and future conditions not yet identified as a result of contracting COVID may adversely impact a student's educational performance or other major life activity, and if they do, the same process described in this document applies to those students.

¹¹See CDC's Post-COVID Conditions website, <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html>.

¹²See CDC's Post-COVID Conditions website, <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html>.

¹³For more information concerning long COVID as a disability, see Department of Justice and Department of Health and Human Services, Guidance on "Long COVID" as a Disability Under the ADA, Section 504, and Section 1557, <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance>.

¹⁴34 C.F.R. §§ 300.301-300.306.

¹⁵IDEA does not require children to be identified with a particular disability category for purposes of the delivery of special education and related services, since a child's entitlement under IDEA is to FAPE and not to a particular disability label. See Assistance to States for the Education of Children With

Disabilities and Preschool Grants for Children With Disabilities; Final Rule, 71 Fed. Reg. 46540, 46737 (Aug. 14, 2006).

¹⁶34 C.F.R. §§ 303.303-303.322.

¹⁷29 U.S.C. § 705(9)(B), (20)(B).

¹⁸For more examples of major life activities and bodily functions, see the Department's Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools (Resource Guide), available at <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>.

¹⁹In addition, if a person with long COVID has a record of such impairment or is regarded as having such an impairment, the person would meet the definition of disability under Section 504.

²⁰34 C.F.R. § 303.303.

²¹In this document, parent refers to both parents and guardians.

²²34 C.F.R. § 300.111.

²³34 C.F.R. § 104.35.

²⁴34 C.F.R. § 104.35(c).

²⁵34 C.F.R. § 104.35(d). A reevaluation procedure consistent with the IDEA is one means of meeting this Section 504 requirement.

²⁶Parentally-placed private school children with disabilities may receive special education and related services through a services plan. See 34 C.F.R. §§ 300.130-300.144.

²⁷For more information about identification, evaluation, placement, and other Section 504 procedures, refer to the Resource Guide, available at <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>.

²⁸34 C.F.R. §§ 104.4, 41-47. Postsecondary institutions also are not required to provide academic adjustments, auxiliary aids and services, or modifications that would impose an undue burden or cause a fundamental alteration to the service, program, or activity.

²⁹34 C.F.R. § 104.44.

³⁰Under Title II of the Americans with

Disabilities Act (Title II), which prohibits disability discrimination by public entities, including public schools, OCR has jurisdiction regardless of whether the entity receives Federal financial assistance.

Statutes Cited

29 USC 705(9)(B)

29 USC 705(20)(B)