

# Application of Section 504 in Child Welfare Agencies

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In May 2024, the Department of Health and Human Services released a final rule for Section 504 of the Rehabilitation Act of 1973, a federal law that prohibits discrimination against individuals on the basis of disability. This has been the only comprehensive update made since the regulation’s release and adds explicit protections in many areas, including health care and human services. This update also directly addresses the application of Section 504 provisions in the child welfare context. Innovations Institute has reviewed this final rule and compiled this resource to highlight the impact on youth and families involved with child welfare systems who are experiencing disability.

## Introduction to Section 504 of the Rehabilitation Act of 1973

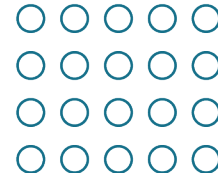
[Section 504 of the Rehabilitation Act of 1973](#) is a federal law that prevents organizations receiving federal funding from discriminating against individuals based on a disability. To ensure access to programs and activities, the law sets out definitions clarifying for whom and how the law applies. A person qualifies if she has “a physical or mental impairment that substantially limits one or more of the major life activities” of an individual, which can include working or learning ([§84.4\(a\)\(1\)\(i\)](#)). Section 504 requires organizations to ensure that people are not prevented from participating in programs, including receipt of benefits, based on barriers related to their disability.

While much discussion about Section 504 surrounds requirements for education or employment, the Office of Civil Rights (OCR) has been enforcing this rule in a child welfare context since 1977. However, [45 C.F.R. §84.60](#), a part of the final rule that went into effect on July 8, 2024, includes nondiscrimination requirements explicitly for children, parents, caregivers, foster parents, and prospective parents in the child welfare system. This addition to Section 504 clarifies obligations to:

- Remove barriers for people with disabilities in the child welfare system
- Prohibit decisions based on speculation, stereotypes, or generalizations about disability
- Apply Section 504 to specific services in the child welfare system
- Prohibit forfeiture of custody as a requirement for services
- Evaluate parents based on parenting ability rather than a measure of disability
- Incorporate children into the most-integrated setting that can meet their needs

## Integration

Protections for individuals with disabilities can come from a variety of sources, including federal law and rulings from courts. One of the most important court decisions impacting individuals with disability was [Olmstead v. L.C.](#), issued by the U.S. Supreme Court in 1999. In their decision, the Supreme Court determined that people with disabilities have the right to receive services in the community, when appropriate, rather than in institutions or segregated settings. This update to Section 504 codifies the Olmstead decision, requiring recipients of federal funds to prevent unnecessary segregation.



Broadly, the final rule requires programs and activities to be provided to individuals in the “**most integrated setting appropriate to the needs of a qualified person with a disability**” (§84.76(b)). In schools, this requirement is frequently referenced to include students in traditional classrooms or after-school programs, but this final rule clearly defines this integration requirement and applies it directly to federally funded child welfare systems.

Recent studies show that approximately one-third of youth in foster care have a disability, which includes physical and developmental disabilities as well as mental-health related diagnoses. This rule requires child welfare systems to **place children in the “most-integrated setting”** (§84.68(d)) that meets their needs. Section 504 lays out a clear definition, specifying that the most-integrated setting “provides individuals with disabilities the opportunity to **interact with nondisabled persons to the fullest extent possible**” (§84.10), living in and receiving services inside their community, and providing choice in daily activities. Settings that limit contact and autonomy, such as a Psychiatric Residential Treatment Facility (PRTF), would be considered a segregated setting.

**For many children, the most integrated setting is within their home.** Therefore, Section 504 prevents discrimination by default placement of a child in a group home or congregate care facility. Child welfare agencies should provide services to keep children in their homes, and when it is necessary to remove a child, agencies are required to attempt to find a foster home placement and provide appropriate services to prevent placement in a congregate care setting.


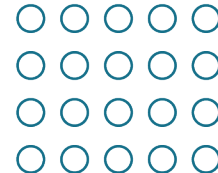
## Limiting Out of Home Placements

In addition to codifying Olmstead, this final rule clarifies Section 504’s requirements to protect the rights of “children, parents, caregivers, foster parents, and prospective parents” who engage with the child welfare system (§84.60). By clarifying that the full breadth of individuals interacting with child welfare systems have the right to receive services, Section 504 demonstrates that this can impact families in two ways: a disabled child’s right to receive services while living in a home, and disabled parents’ rights to receiving services that support their exercise of parental rights.

### *A Child’s Right to Receive Services*

Broadly, Section 504 requires programs to be implemented in a way that does not prevent an individual’s participation based on his disability. Many states and government agencies have been working hard to keep children in their homes, but occasionally, parents have had to voluntarily place their children in child welfare or relinquish rights in order for their children to access key programs and supports, with children ending up in group homes to receive the services they need.

The final rule codifies best practices, making clear that children, on the basis of their disability, cannot “**be placed outside the family home** through custody relinquishment, voluntary placement, or other forfeiture of parental rights in order to receive necessary services” (§84.60(b)(5)). By providing access to critical supports without impacting custody, children can remain in the care of their families while receiving important services.



### *A Parent's Right to Receive Services*

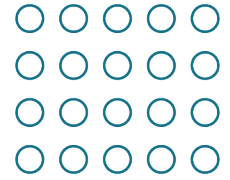
Children can also be impacted by their parents' disabilities. To clarify how Section 504 protects a parent's right to receive services, the final rule specifically **prohibits decisions based on speculation, stereotypes, or generalizations** about disability ([§84.60\(a\)\(2\)](#)). Instead, an individual assessment must be conducted, and a decision must be made **based on "parenting ability"** rather than a measure of someone's disability after considering **"adapted services or reasonable modifications"** ([§84.60\(c\)](#)). The rule explicitly applies to visitation, services, termination of parental rights, and guardianship decisions, and this assessment is required.

These **parental evaluations must be "fully accessible," "based in evidence or research," and "conducted by a qualified professional"** ([§84.60\(c\)](#)). This requires tool selection based on the individual being evaluated to ensure that the results fully assess both an individual's parenting ability and need for supports. Child welfare agencies are responsible for ensuring that the professional conducting the test has the expertise necessary to make a full assessment and create a referral system for individuals who need modifications or accommodations. By ensuring that a parental evaluation does not solely focus on a parent's disability, OCR is ensuring that **qualified parents are not denied parental rights, custody of, or visitation with their children based on their disability**.

### **Responding to Denial of Programs and Services**

Parents with disabilities who are deemed qualified may need additional support to keep their children in their care. Section 504 explicitly links a program's funding to preventing discrimination in programs and activities, and the new rule clarifies that parents, guardians, foster parents, and potential parents with disabilities should not be denied **"any and all services provided by a child welfare agency"** ([§84.60\(b\)\(2\)](#)) due to disability, which includes family preservation and reunification programs. The rule also clarifies that the broader components of Section 504, including reasonable modification to policies and communication, apply in child welfare agencies, as do other non-discrimination laws, such as the Americans with Disabilities Act (ADA).

The Office of Civil Rights is charged with holding child welfare agencies accountable to Section 504. They have authority to investigate, perform compliance reviews, and attempt corrective action in the case of a violation. OCR can also raise issues to the US Department of Justice to initiate legal action or suspend Federal funding if an issue is not resolved. It is critical that anyone experiencing this type of discrimination in a child welfare setting submit an official complaint to the OCR. Please check out the 'Resources' section for more information about identifying and responding to Section 504 discrimination.



## Resources

- Section 504 Resources
  - [OCR Section 504 Website](#)
  - [ACF Information Memorandum](#)
  - [Section 504 rule Fact Sheet](#)
- Office of Civil Right Complaint Resources
  - [OCR Complaint Portal Assistant](#) to submit a complaint online
  - Toll-Free Number (800) 368-1019 or (800) 537-7697 (TDD) to submit by phone
  - [OCRcomplaint@hhs.gov](mailto:OCRcomplaint@hhs.gov) to submit by email
  - Or submit by mail at Centralized Case Management Operations, U.S. Department of Health and Human Services, 200 Independence Ave., S.W., Room 509F, Washington, D.C. 20201