

SECTION 504 PLANS: EXAMINING INEQUITABLE ACCESS AND MISUSE



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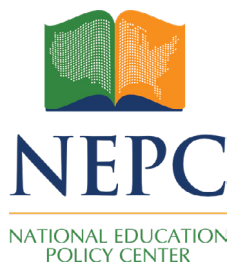
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I. Executive Summary

Although education is often rhetorically or aspirationally lauded as the great equalizer, far-reaching inequities persist. The legal process is one avenue to address these inequities. However, the law can also exacerbate inequities. This is particularly the case when either privileged or under-resourced families navigate gray areas in the law, including federal laws related to students with disabilities—specifically, the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act.

Section 504's broad eligibility criteria, lack of funding, and substantial deference to the professional judgment of educators and external evaluators have favored powerful and privileged families. Accommodations can be a powerful tool to promote equity for students with disabilities and it is important that all students who need accommodations have access to them. Federal disability law allows affluent parents, families, and students to leverage their power and privilege to pursue accommodations when needed—and even when they're not. At the same time, federal law can leave minoritized caregivers who lack resources, such as money to pay for private evaluators, unable to access 504 accommodations, including extended testing time, modified classroom assignments, and breaks.

Research and emerging trends have raised increasing concerns about unfairness and abuses of disability policies, particularly with regard to intersectional disadvantages and advantages that may emerge in the implementation of Section 504, depending on a student's social identities. For example, a single individual may be disadvantaged by ableism and classism, *or* ableism and racism. The converse is also true: An individual with multiple privileged social identities may experience compounded advantages.

In this policy brief, we present significant research that should inform policymaking around Section 504. We also consider the trends documenting ongoing and even increasing inequities in how the law is being used. Because many of these inequities are systemic, we then

provide recommendations that include policy actions at the federal, state, and local levels.

Federal

We recommend that federal policymakers:

- Analyze civil rights data (Civil Rights Data Collection) through an intersectional lens, including disability and other social identities, to identify compounded advantages and disadvantages in Section 504 implementation; compare Section 504 data and IDEA data to identify disparities in identification and access to accommodations; and use these analyses to provide guidance and technical assistance to recipients of federal funds.
- Survey providers and others receiving help from technical assistance centers to identify aspects of Section 504 implementation that need additional federal support to address disparities in access to 504 accommodations.
- Increase proactive OCR investigations of the use of Section 504 accommodations, to ensure that some groups of students are not systematically advantaged and others disadvantaged in Section 504 implementation.
- Reinforce efforts to take a systemic approach to OCR Section 504 complaints, as opposed to solely addressing complaints at the individual student level.
- Seek to involve affected families at the margins in Section 504 legislative and regulatory changes.
- Craft explicit language in legislation/regulations that requires school districts to pay for Section 504 evaluations and requires that implementors and federal enforcement personnel consider connections between Section 504 and discrimination under other civil rights laws.
- Strengthen legislative and regulatory language related to identification and evaluation requirements under Section 504 (for example, reinforce requirements for school districts to identify students with disabilities, require parental involvement, specify data to be included in the evaluation process, and require that the plan be written).
- Review Office of Special Education and Rehabilitative Services Discretionary Grants Funds and create funding opportunities for training and research that examines intersectional inequities in the implementation of Section 504 (for example, access to 504 accommodations for low-income families of color unable to pay for private evaluators, if federal law is not revised to require districts to pay for evaluations).

State

We recommend that state policymakers:

- Analyze school- and district-level trends in Section 504 in comparison to IDEA data through an intersectional lens, including disability and other social identities, to iden-

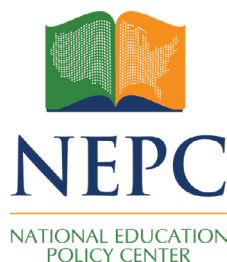
tify compounded advantages and disadvantages in Section 504 implementation; then, use the analysis to provide data-driven guidance and resources for educators, leaders, parents, and the public on the nuances of Section 504 legislation and regulation and the importance of promoting equitable family partnerships in its implementation.

- Offer state-sponsored professional development for education professionals to critically reflect on the role of power and privilege in disability identification, supports, services, accommodations, and in providing due process.
- Prioritize state grants to support equitable Section 504 implementation through an intersectional lens (for example, providing funding for educational institutions to hire expert consultants or personnel with relevant expertise and providing need-based funding for caregivers to pay for external evaluations).
- Provide grant opportunities for researchers to partner with state or local policymakers to study and offer recommendations to address inequitable access to and misuse of Section 504 plans.

Local

We recommend that local policymakers:

- Promote equitable partnerships between school personnel and families with students with disabilities by soliciting families' perspectives and, to the extent possible, incorporating those perspectives in policy guidance.
- Set aside dedicated funding for professional development that requires attendees to engage in critical reflection and create action steps related to the role of power and privilege in Section 504 implementation.
- Analyze local Section 504 data to determine where compounded inequities may exist and create district and school policy solutions that target root causes of advantages and disadvantages.
- Collaborate with researchers to conduct studies that will inform district policy related to the equitable use of accommodations for students with disabilities.



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II. Introduction

Although education is often rhetorically or aspirationally lauded as the great equalizer, far-reaching inequities¹ persist. The legal process is one avenue to address these inequities. For example, plaintiffs have successfully challenged education funding formulas,² school segregation,³ and educational opportunities for students with disabilities.⁴ However, the law, as an institution, can also exacerbate inequities, particularly when either privileged⁵ or under-resourced families navigate gray areas in the law. A case in point is the implementation of federal laws intended to promote equity for students with disabilities.

Two such federal laws are the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act. While they are complementary, they are fundamentally different. Both provide protections for students with disabilities, but IDEA is an entitlement law—that is, it guarantees students with disabilities a special education, has detailed complex procedural safeguards and processes for identification and implementation, and does not apply to higher education. In contrast, Section 504 is an anti-discrimination law that broadly prohibits disability discrimination in programs receiving federal funding, including primary, secondary, and higher education institutions. Moreover, Section 504's legal framework does not have the same complex identification and procedural requirements as IDEA. We present further details about the specific requirements of the laws below.

Federal Legal/Policy Context

Each year, millions of students receive supports, services, or accommodations under IDEA and Section 504. According to the National Center for Education Statistics, in 2020-21, 15% or 7.2 million students ages 3-21 received special education services under Part B of IDEA.⁶

The most recent data from the U.S. Department of Education's Office for Civil Rights indicates that in 2017-2018, close to 1.4 million students were served under Section 504.⁷ An overview of each of these laws is necessary to provide a foundation for understanding the potential for reducing and exacerbating inequities in the implementation of Section 504.

The Individuals with Disabilities Education Act (IDEA)

IDEA was initially passed by Congress in 1975 as the Education for all Handicapped Children Act, reauthorized in 1990 as the Individuals with Disabilities Education Act, and again in 2004 as the Individuals with Disabilities Education Improvement Act. IDEA protects children with disabilities from birth to age 21. The law delineates procedural and substantive requirements regarding the provision of educational services for students meeting its eligibility criteria. Part B details provisions for providing a free appropriate public education in the least restrictive environment for students 3 to 21, while Part C details early intervention services for children from birth to two.

IDEA's primary purpose is to "ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living."⁸ IDEA provides funding to states, and as a condition of accepting IDEA funding, states are required to comply with the law's requirements. The U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) administers and oversees IDEA. To support this work, the federal government provides funding for technical assistance centers to provide support for parents, educators, state education employees, and school districts.⁹

To qualify for special education under IDEA, students must meet the definition of a student with a disability. According to the law, a student with a disability is a child who has intellectual or specific learning disabilities, hearing, visual, orthopedic, speech or language, or other health impairments; emotional behavioral disabilities, deaf-blindness, autism, traumatic brain injuries, or multiple disabilities *and* "who, by reason thereof, needs special education and related services."¹⁰ Caregivers can request that the district pay the cost of an independent evaluation, but the evaluation process as well as eligibility criteria provide the potential for inequities, as will be discussed later in this brief. The implementation of the law is further complicated by the fact that states can pass legislation or guidance with state-specific requirements, so long as they are consistent with IDEA specifications.

Each eligible student is entitled to an Individualized Education Program (IEP). According to case law, to provide a free, appropriate public education, a school must offer an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."¹¹ The law provides specific details on what must be included in an IEP, including: "present levels of academic achievement and functional performance"; measurable annual goals and how progress will be measured and when it will be reported; "a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of

the child, and a statement of the program modifications or supports”; and, an explanation of the extent to which the student will be educated with students without disabilities.¹²

IDEA also provides specific requirements regarding the qualifications of decision makers who participate in the special education process. Specifically, an IEP team must include: the parents/caregivers, at least one regular education teacher (if the child participates or may participate in the regular education environment), at least one special education teacher, a representative of the local education agency who meets certain requirements, an individual who is qualified to interpret the results of assessments, and anyone else with knowledge or expertise, including the child, when appropriate.¹³ It is important to note that students with IEPs begin transition services at age 14 and can play a critical role in the IEP meetings as self-advocates. While IDEA requires caregiver and student involvement,¹⁴ the professional judgment of educational professionals holds greater weight.¹⁵ Overall, the complex requirements of IDEA can make Section 504 a more appealing option for privileged families.

Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973 is a civil rights law that prohibits disability-related discrimination in primary, secondary, and postsecondary education programs receiving federal funding. In contrast to IDEA, Section 504 provides no dedicated funding; however, failure to comply can trigger loss of federal funding. The U.S. Department of Education’s Office for Civil Rights (OCR) oversees enforcement of Section 504. As a part of this work, OCR engages in multiple activities, including issuing policy guidance, conducting complaint investigations, collecting civil rights data (CRDC), and providing technical assistance.¹⁶

Both IDEA and Section 504 require school districts to identify eligible students under each law. However, “unlike federal regulations promulgated under the IDEA, current regulations under Section 504 do not delineate what it means to ‘undertake to identify and locate’ students and what constitutes ‘appropriate steps’ to notify and inform parents.”¹⁷ The eligibility criteria for Section 504 are also broader than those for IDEA. Specifically, a student qualifies if the student: “(i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.”¹⁸ Important amendments to federal disability law in 2008 expanded the meaning of disability by, for instance, defining “major life activities” expansively, allowing more people to qualify for the law’s protections.¹⁹ The change came after years of courts narrowing the meaning of disability, leaving people without protections against discrimination.

Section 504 privileges the professional judgment of educators and external evaluators in the identification process. Schools do not need to evaluate the students upon parental demand, but families can pay outside evaluators to assess whether students have a disability and to recommend accommodations.²⁰ To determine accommodations and placement, schools must draw on numerous data sources during the evaluation process. Sources include external medical evaluations, as well as “aptitude and achievement tests, teacher recommendations, physical condition, social and cultural capital background, and adaptive behavior.”²¹

Moreover, while the law requires that the ultimate decision makers regarding accommodations be those with knowledge of the student, unlike IDEA, the law does not require that schools include caregivers.

Regarding accommodations, Section 504 provides less detail than IDEA about specific requirements related to the structure, substance, or process related to the creation of 504 plans—for example, the plans need not be written. A Section 504 plan provides accommodations for students with disabilities who do not qualify for special education instruction and services under the stringent requirements of IDEA. In this sense, Section 504 is more about fulfilling the promise of anti-discrimination, removing barriers, and promoting access to education comparable to students without disabilities, as opposed to IDEA’s emphasis on the provision of educational services and supports. The definition of a disability and the lack of specificity of Section 504 are two characteristics of the law that are particularly vulnerable to inequities, as will be further detailed below. Table 1 presents similarities and differences between Section 504 and IDEA relevant to this brief.²²

Table 1: IDEA vs. Section 504

	IDEA	Section 504
Purpose	To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.	To prevent exclusion, denial of benefits, or discrimination on the basis of disability.
Funding and Application	Yes. Grant statute that provides states with funding that is distributed to districts.	No. Civil rights law that does not provide funding for implementation and applies to programs receiving any federal funding.
Eligibility	Intellectual or specific learning disabilities; hearing, visual, orthopedic, speech or language, or other health impairments; emotional behavioral disabilities, autism, and traumatic brain injuries and “who, by reason thereof, needs special education and related services.”	Any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

Decision-Makers	The parents, at least one regular education teacher (if the child participates or may participate in the regular education environment), at least one special education teacher, and a representative of the local education agency who meets certain requirements, an individual who is qualified to interpret the results, and anyone else with knowledge or expertise, including the child, when appropriate. It is important to note that transition meetings involve the child starting at age 14.	No specific requirements regarding who the team of decision makers must be and school districts have the discretion of whether to include caregivers.
Evaluators	Parents have a right to request an evaluation paid for by the district. If parents disagree with the evaluation, they can request an Independent Educational Evaluation (IEE), although the district is not required to pay for this.	Districts do not need to conduct an evaluation upon parental demand and the district is not required to pay for external evaluators.
Related Plans	IEP addresses the provision of educational services, measurable annual goals and a timeline for review.	Section 504 plan aims to prevent discrimination and ensure access but specific requirements are not presented in the law (for example, plans do not need to be in writing).

Intersectionality

Federal laws affecting students with disabilities provide an important policy framework to address inequities. Nonetheless, the policy structures, funding mechanisms, and gray areas in Section 504 create an environment for inequities to proliferate at the intersection of disability and other social identities, such as race, socioeconomic status, etc. Consequently, inspired by the work of groundbreaking scholars such as Kimberlé Crenshaw²³ and Patricia Hill Collins,²⁴ in this brief we apply an intersectional approach²⁵ that highlights the ways in which individuals with multiple marginalized social identities experience compounded systemic inequities. For example, a single individual may be disadvantaged by ableism²⁶ and classism, *or* ableism and racism.²⁷ The converse is also true: An individual with multiple privileged social identities may experience compounded power²⁸ and advantages. Consequently, our analysis of Section 504 accounts for both compounded inequities and compounded advantages, depending on an individual's identities.²⁹

Although our primary focus in this brief is Section 504, discussion of its connection to IDEA in practice allows for a comprehensive, systemic analysis of the factors impacting the inequitable access to and the misuse of Section 504 plans. Key differences between the laws allow for inequitable access to and misuse of Section 504 in ways that favor wealthy, predominantly white³⁰ families. Section 504's broad eligibility criteria, lack of funding, and substantial deference to the professional judgment of educators and external evaluators have favored powerful and privileged families. Accommodations can be a powerful tool to promote equity for students with disabilities and it is important that all students who need accommodations

have access to them. Federal disability law allows affluent parents, families, and students to leverage their power and privilege to pursue accommodations when needed—and even when they’re not. At the same time, the federal policy context can leave minoritized³¹ caregivers who lack resources, such as money to pay for private evaluators, unable to access 504 accommodations, including extended testing time, modified classroom assignments, and breaks.

To illustrate this reality, the first section of the literature review below surveys research on the intersectional inequities that occur in the implementation of disability-related law in education. The second section focuses on the significance of testing and school accommodations and the intersectional inequities that occur in access to accommodations.³² Building on the themes that appear in the literature, we then present emerging trends regarding the inequitable access to and misuse of Section 504 plans. Finally, we present recommendations for policymakers at the federal, state, and local levels.

III. Review of the Literature

Constructing policy solutions to remedy inequitable access to and misuse of Section 504 requires understanding two research areas. The first, research on inequities in implementation of federal disability law, demonstrates that laws intended to protect minoritized communities, such as students with disabilities, may nonetheless undermine equity by reinforcing social hierarchies. The second area of research focuses on the impact of testing accommodations and arbitrary access to them.

The Role of Power and Privilege in Federal Disability-Related Law in Education

Despite the potential value of the legal protections available under federal disability law, including both IDEA and Section 504, research literature reveals the role of power and privilege in determining which students receive disability-related supports, services, and accommodations. The literature shows that it is possible for institutions to appear in compliance with the law, while concurrently undermining its intent.³³ An intersectional analysis accounting for multiple forms of oppression and privilege that students may experience (ableism and classism, for example, or ableism and racism, and so on) reveals nuanced inequities in the implementation of federal disability law in education.³⁴ Understanding such nuances is critical to identifying root causes and constructing meaningful and effective policy solutions.

Reflective of the systemic and intersectional nature of the problem, inequities are found across topics of disability-related research, including both Section 504 and IDEA. Broadly, researchers have identified racial, cultural, and socioeconomic disparities in identification, placement, and discipline. Inequities in the identification process include, for example, disproportionality or overidentification of Black students, under-identification of multilingual students, and overrepresentation of white students/underrepresentation of students of color

under Section 504).³⁵ Inequities in placement include the placement of students of color in more restrictive or segregated environments.³⁶ And inequities in discipline include students of color facing harsher, more subjective, or more frequent disciplinary consequences.³⁷ Additionally, researchers have identified systemic barriers to parent and family involvement or collaboration,³⁸ and inconsistencies in access, protections, and enforcement,³⁹ which are sometimes caused by the ambiguity of Section 504 in comparison to IDEA.⁴⁰

Literature on disability identification, parental/family partnerships, and inconsistencies in access, protection and enforcement is particularly relevant to our analysis. Researchers have found linguistic, racial, socioeconomic, and sex-based inequities in the identification process.⁴¹ According to the literature, inequities occur more often in “soft” disability categories (emotional behavioral disabilities, for example), which involves much more subjectivity in the identification process.⁴² Research shows that bias, cultural dissonance, and stereotypes impact the identification process for these “soft,” high-incidence categories.⁴³

Cultural and social advantages play an important role in access and opportunities available to students with disabilities. Specifically, research has found that wealthy families’ “cultural and social capital aligns with school structures in ways that (re)produce inequality.”⁴⁴ Moreover, scholars note that parents with power or capital seek out “elite” categories (for example, Attention Deficit Hyperactivity Disorder (ADHD)) that are more driven by medical rather than educational determinations.⁴⁵ Two processes, termed “shifting” and “drifting” in related research,⁴⁶ help explain this outcome. Shifting means that over time, perceptions of various types of disabilities “shift” and become more or less stigmatized.⁴⁷ For example, medically determined disabilities like ADHD may be perceived as less stigmatized, while educationally determined disabilities, including intellectual or emotional disabilities, may be perceived more negatively.

The “drifting” process occurs when families in positions of power and privilege “drift” away from disability categories that may bear greater stigma. For example, research uses Autism Spectrum Disorder (ASD) and ADHD to illustrate this drifting process, noting a drift toward ASD and ADHD and away from categories such as Intellectual Disability and Emotional Behavioral Disability. Families with resources who might feel uncomfortable having a child diagnosed with what they perceive as a stigmatized disability may be in a position to pursue a relatively less stigmatized disability category, such as ADHD. In contrast, families with fewer resources may be less likely to successfully navigate between more or less stigmatized disability categories. It is important to note as well that students labeled with a disability may have very different experiences, depending on their social identities and related forms of oppression and discrimination. For example, students of color may experience heightened surveillance because they are perceived differently than their white classmates.⁴⁸

Further disability-related inequities are evident in comparisons of IDEA and Section 504 demographic data. Researchers have found that Black and Hispanic populations are underrepresented among students receiving Section 504 accommodations; they hypothesize that this may be in part because white, wealthier families are strategically seeking accommodations for secondary students taking the American College Test (ACT) and/or the Scholastic Aptitude Test (SAT).⁴⁹ In contrast, the majority of related research on IDEA finds that students of color are overrepresented in special education.⁵⁰ The next section applies the

general ideas presented in this section to Section 504 and access to testing accommodations more specifically.

The Impact of Testing Accommodations and Arbitrary Access to Them

Research on the impact of testing accommodations in the K-12 context, both under IDEA and Section 504, has found mixed results that highlight the importance of context in determining the effectiveness of accommodations.⁵¹ The specific accommodation, coupled with students' types of disability, backgrounds, and demographic characteristics, affect student test performance. Testing accommodations can provide a positive effect on the performance of students with disabilities, but the effect may vary by context, including by student age and grade level.⁵² Conversely, some accommodations for students with disabilities of certain ages may have a negative or no impact on their test performance.⁵³

One of the most common testing accommodations for students with disabilities is extended time.⁵⁴ Reviews of the research in this area have generally found that extended time is beneficial to students with and without disabilities. For instance, in one study, researchers assessed the effect of extended time on SAT performance and found that time-and-a-half benefited students with and without disabilities, providing particular benefit for medium- to high-ability students with and without disabilities and with a more pronounced impact in math.⁵⁵ In contrast, students with low ability did not benefit at all.⁵⁶ But, generally, the research shows that students with disabilities seem to benefit the most from extended time accommodations.⁵⁷

Given the general conclusion that accommodations have a positive impact on the test performance of students with disabilities, who gets access to accommodations and how they do so becomes an important question. There have long been concerns that students without disabilities might abuse the system and receive undeserved accommodations.⁵⁸ Over time, such concerns have led to increasingly lengthy requirements for students to prove that they have a disability. For instance, in early 2000s, the ACT increased their eligibility requirements for students to prove their need for accommodations to prevent abuse.⁵⁹ The College Board announced similar lengthy requirements to qualify for accommodations for the SAT.⁶⁰

But changes in legal interpretation, policy, and guidance applicable to Section 504 have nevertheless gradually expanded the meaning of "disability," allowing more students to fall under the category.⁶¹ Consistent with calls from national organizations to broaden the meaning of disability,⁶² in 2008, Congress revised the meaning of disability and functionally expanded who qualified as a person with a disability.⁶³ Subsequent regulations and updated guidelines for people conducting evaluations centered the need to remove burdens for students with disabilities to access accommodations.⁶⁴ On the ground, there is a lack of uniformity in the standards and processes to determine eligibility for accommodations.⁶⁵

Within this context, where structural barriers to accessibility have generally been lessened,⁶⁶ tentative patterns have emerged indicating that power and privilege have been used to secure accommodations under Section 504. For instance, studies have found a strong relationship between socioeconomic status and students receiving accommodations throughout

their educational trajectory.⁶⁷ Scholars have also noted that the cost of documenting a learning disability under Section 504 falls largely on students and families, advantaging wealthier families.⁶⁸ Section 504 is particularly vulnerable to this issue because of its broader eligibility criteria than IDEA and substantial deference to professional judgment in practice.

IV. Recent Developments in the Inequitable Access to and Misuse of Accommodations

The use of power and privilege to secure and misuse accommodations came into sharp focus in the 2019 cheating and bribery college admissions scandal,⁶⁹ which drew media attention to the misuse of accommodations nationwide. Broader emerging trends regarding the inequitable access to accommodations provide some evidence for critiques in the literature, and they also underscore the need for related research and for systemic policy change, especially related to Section 504 plans.

The Varsity Blues Scandal

National headlines in 2019 exposed the misuse of Section 504 accommodations in college admissions testing as a tool for wealthy, predominantly white college applicants to gain an unfair advantage in the college admissions process.⁷⁰ The scandal drew attention to both inequitable access to Section 504 accommodations for families with limited resources and the misuse by those who have the resources to secure 504 accommodations. The controversy involved accusations and criminal charges against a college consultant who claimed to help students and parents secure admission to selective colleges.⁷¹ The consultant made \$25 million by creating a years-long elaborate fraudulent scheme, involving bribing coaches and arranging for impostors to take the SATs or ACTs for high school students.⁷² Beyond criminal issues and most germane to our analysis, he helped wealthy families receive 504 testing accommodations to improve their SAT and ACT scores by cherry picking costly evaluators and coaching students so that the evaluators would diagnose them in need of accommodations.⁷³

Generally, the consultant asked families to coach their children to pretend to have a disability, allowing them to receive accommodations on the SAT and/or ACT exams, especially extended time.⁷⁴ He worked with a cadre of expensive evaluators to test students for “learning differences,” which he noted to clients any student is bound to have.⁷⁵ The focus on “learning differences” in the implementation of Section 504 allows for more students to qualify as having a disability,⁷⁶ allowing them access to not only more testing time but also other accommodations, such as testing in a different room or additional breaks.⁷⁷ The scandal and responses draw national attention to systemic limitations regarding the current state of evaluation processes and access to accommodations under the law.

Emerging Trends on the Inequitable Access to and Misuse of 504 Plans

While research is limited, emerging patterns across the United States suggest inequitable

access and the potential misuse of 504 plans are national issues and extend beyond extended time in college admissions tests. Accommodations may also include, for example, extra time on in-school exams, classwork, and homework. Federal data and investigative journalism have found that although students on 504 plans make up a relatively small percentage of K-12 students, such plans are largely concentrated in wealthier school districts, and wealthy white students constitute the largest proportion of students with such plans.⁷⁸ In 2018, journalists highlighted the experiences and stories of families across the country to reveal the increasing rates of students with relative privilege securing 504 plans in K-12.⁷⁹ The rate more than doubled between the 2009-2010 and 2015-2016 academic years, with most of the growth in wealthier districts. Moreover, white students received 63% of all 504 plans, while only making up about 49% of the student population.⁸⁰ In addition, while some experts have noted that caregivers need to be equipped with knowledge to advocate for their children's needs to secure a 504 Plan, some media reports show that knowledge by itself can be insufficient—as indicated by an account of a knowledgeable mother of color who actively but unsuccessfully advocated for her child to receive a 504 plan in a low-income district.⁸¹

In 2019, *The Wall Street Journal* conducted a broader analysis of federal data, examining data from 9,000 public schools and finding that affluent school districts have seen a significant increase in 504 plans within the last decade.⁸² They found striking differences between wealthy and under-resourced school districts. Whereas an average of 4.2% of students had 504 plans in districts where no more than 10% of students were eligible for free or reduced lunch, only 1.6% of students attending districts where 75% or more of students are eligible for free or reduced lunch had such plans.⁸³ *The New York Times* found a similar wealth gap in their K-12 analysis.⁸⁴ The advantage in securing a 504 plan is extended into college admissions testing, because the SAT and ACT organizations rely heavily on the schools' reporting and documentation.⁸⁵

Privileged families have weighed in on the public discussion, offering candid, often anonymous, comments. For instance, a mother of a middle school student who was diagnosed with ADHD and anxiety shared the following with *The New York Times*: “It’s totally unfair . . . I know how to advocate for my kid. We made sure he got what he needed and it wasn’t always clear. We bring that privilege to the table.”⁸⁶ Wealthy caregivers shared their general concern that colleges are increasingly competitive. They argue that the fierce competition pressures them to aggressively advocate for their children, including by advocating for accommodations in school and college entrance exams. They have the money, knowledge, and privilege to do so.⁸⁷ In sum, the trends exemplify how power and privilege can be leveraged at all stages of the process, from the identification of a disability and maximizing the benefit of certain types of accommodations to evading the disadvantages (stigma, for example) associated with certain disability categories.

V. Discussion and Analysis

In this section, we offer a nuanced discussion of salient themes that emerge from the literature as well as recent developments in the use of 504 plans. More specifically, we focus on the systemic nature of inequities, the ways in which power and privilege can be used to

gain advantages through the gray areas of Section 504, and the ways in which the law (both as written and as implemented) does not account for intersectional identities and contexts.

Intricate Linkages Between Systemic Inequities

The mechanisms that contribute to inequitable access and misuse of Section 504 plans and testing accommodations are not unique to Section 504. On the contrary, its inequities are tied to systemic issues related to oppression, discrimination, power, and privilege more broadly. For instance, families who lack social, economic, and cultural capital can be disadvantaged in the process of seeking accommodations or special education for their children.⁸⁸ They may be unfamiliar with the expectation to advocate zealously or may defer to educators' expertise.⁸⁹ Yet, in the public discourse, some have framed the overrepresentation of wealthy, white students in 504 plans as an issue of caregivers' lack of advocacy.⁹⁰ This common narrative blaming under-resourced caregivers for education inequities ignores the systemic discrimination disadvantaged families face in schools and society.⁹¹

Within this deficit frame, criteria and eligibility processes are not questioned as problematic, nor are biases or systemic racism families may experience in and out of schools.⁹² Because critique focuses on caregivers rather than on troubling implementation trends within and across districts, systemic issues remain unexamined and unchallenged; meanwhile, education leaders and educators receive little or no guidance in addressing inequities and improving Section 504 implementation. A beginning to improving the situation can be found in prioritizing data collection and analysis, funding, research, training, and professional development.

The Limitations of the Federal Disability Law in Addressing Intersectional Inequities

Relevant literature and recent developments indicate that Section 504's legal framework contributes to existing inequities. The general flexibility in the Section 504 eligibility criteria, identification process, and implementation of the law opens up the possibility for families to leverage power, wealth, and privilege to secure accommodations for their students who may not qualify for them under IDEA (See Table 1).⁹³ Because Section 504 leaves room for significant professional discretion, evaluators can play a key role in the identification process. However, the law provides no funding for evaluations, leaving under-resourced families less likely to obtain private evaluation when a child is ineligible for special education under IDEA.⁹⁴ Some have noted that private evaluators who are paid thousands of dollars may be more inclined to find a disability and to recommend extended time, readers, and special testing conditions.⁹⁵ Furthermore, due to systemic exclusion from cultural capital, even under-resourced families who are able to secure 504 plans for their children may be unaware of their rights under the law.⁹⁶

The relative simplicity of Section 504 and its interplay with IDEA in practice creates a policy environment that is vulnerable to inequities in implementation. Policymakers, education

leaders, and educators can begin to address limitations in the law’s legal framework by recognizing that individual students can be disadvantaged by multiple forms of oppression, such as ableism and racism, and/or classism. They can emphasize the role of these compounded disadvantages in issues related to eligibility, enforcement, cost, the limitations of existing measures of compliance in addressing root causes, and the need for proactive oversight to begin to address the limitations of Section 504’s legal framework.

The Role of Power and Privilege in Implementation

To effectively address inequities, it is essential to examine the ways in which power and privilege function to promote unfair outcomes. Compliance with any law becomes merely symbolic if no attention is paid to how well outcomes match—or fail to match—its intent. Context is crucial,⁹⁷ and local policymakers must work diligently to understand the forces shaping interactions in schools. For example, to address intersectional inequities in the implementation of the law at the local level, educators

can disrupt these social forces because as educators decide who they respond to, how they will leverage resources, and subsequently what they determine to be a viable request for [accommodations], they [may be] reenacting and reifying racialized dynamics under the cloak of benevolence.⁹⁸

Local policymakers can address root causes of disability-related, racial, and socioeconomic inequities by avoiding the assumption that students are solely responsible for their difficulties. Rather, they can recognize that students’ difficulties may stem from or be complicated by racialized dynamics embedded in school policy and/or the assumptions of personnel.⁹⁹

Policy solutions that account for local context and involve stakeholders, such as families as well as school district personnel and attorneys, can counteract the role of privilege in providing accommodations for students. Intersectional data collection/analysis—one that accounts for multiple identities such as race, ability, sex, and socioeconomic status—is critical to identifying and addressing inequities in implementation. So, also, is professional development that focuses not only on legal compliance but also on systemic issues such as discrimination, power, oppression, and privilege. Furthermore, research suggests that it is critical to craft policies that move beyond mere involvement to an equitable and inclusive approach that promotes engagement in practice.¹⁰⁰

VI. Recommendations

Because many inequities are systemic, we provide recommendations that include policy actions at the federal, state, and local levels.

Federal

We recommend that federal policymakers:

- Analyze civil rights data (Civil Rights Data Collection) through an intersectional lens, including disability and other social identities, to identify compounded advantages and disadvantages in Section 504 implementation; compare Section 504 data and IDEA data to identify disparities in identification and access to accommodations; and use these analyses to provide guidance and technical assistance to recipients of federal funds.
- Survey providers and others receiving help from technical assistance centers to identify aspects of Section 504 implementation that need additional federal support to address disparities in access to 504 accommodations.
- Increase proactive OCR investigations of the use of Section 504 accommodations to ensure that some groups of students are not systematically advantaged and others disadvantaged in Section 504 implementation.
- Reinforce efforts to take a systemic approach to OCR Section 504 complaints, as opposed to solely addressing complaints at the individual student level.
- Seek to involve affected families at the margins in Section 504 legislative and regulatory changes.
- Craft explicit language in legislation/regulations that requires school districts to pay for Section 504 evaluations and requires that implementors and federal enforcement personnel consider connections between Section 504 and discrimination under other civil rights laws.
- Strengthen legislative and regulatory language related to identification and evaluation requirements under Section 504 (for example, reinforce requirements for school districts to identify students with disabilities, require parental involvement, specify data to be included in the evaluation process, and require that the plan be written).
- Review Office of Special Education and Rehabilitative Services Discretionary Grants Funds and create funding opportunities for training and research that examines intersectional inequities in the implementation of Section 504 (for example, access to 504 accommodations for low-income families of color unable to pay for private evaluators, if federal law is not revised to require districts to pay for evaluations).

State

We recommend that state policymakers:

- Analyze school- and district-level trends in Section 504 in comparison to IDEA data through an intersectional lens, including disability and other social identities, to identify compounded advantages and disadvantages in Section 504 implementation; then, use the analysis to provide data-driven guidance and resources for educators, leaders, parents, and the public on the nuances of Section 504 legislation and regulation and the importance of promoting equitable family partnerships in its implementation.
- Offer state-sponsored professional development for education professionals to crit-

ically reflect on the role of power and privilege in disability identification, supports, services, accommodations, and in providing due process.

- Prioritize state grants to support equitable Section 504 implementation through an intersectional lens (for example, providing funding for educational institutions to hire expert consultants or personnel with relevant expertise and providing need-based funding for caregivers to pay for external evaluations).
- Provide grant opportunities for researchers to partner with state or local policymakers to study and offer recommendations to address inequitable access to and misuse of Section 504 plans.

Local

We recommend that local policymakers:

- Promote equitable partnerships between school personnel and families with students with disabilities by soliciting families' perspectives and, to the extent possible, incorporating those perspectives in policy guidance.
- Set aside dedicated funding for professional development that requires attendees to engage in critical reflection and create action steps related to the role of power and privilege in Section 504 implementation.
- Analyze local Section 504 data to determine where compounded inequities may exist and create district and school policy solutions that target root causes of advantages and disadvantages.
- Collaborate with researchers to conduct studies that will inform district policy related to the equitable use of accommodations for students with disabilities.

Notes and References

- 1 We define *equity* as “attending to individuals’ unique needs to ensure meaningful access and outcomes. *Racial equity* is a type of equity where resources and power are allocated in a manner that accounts for and ameliorates the historical marginalization of ethnoracially minoritized communities.” Lewis, M.M., Muñiz, R., & Miller, V. (2023). The politicization of education law and the implications for re-envisioning the law school curriculum for racial justice. *Rutgers Race & the Law Review*, 24(1), 1-24.
- 2 For example, *Rose v. Council for Better Education*, 790 S.W.2d 186 (1989).
- 3 For example, *Brown v. Board of Education*, 347 U.S. 483 (1954).
- 4 For example, *Endrew F. v. Douglas County School District*, 580 US __ (2017). In this brief, we “acknowledge the existence of disability as impairment or being a real predicament” and intentionally use the term *disability* because this is the term that is used in the context of the law. However, we note the critical ongoing discussions regarding both the social construction of disabilities (i.e., what society recognizes as a disability is shaped by social context) and the shifting legal construction (i.e., who is protected under the law) of what it means to have a disability in the law as it is written and implemented. For further discussion regarding the use of disability and dis/ability, see Hernández-Saca, D.I., Gutmann Kahn, L., & Cannon, M.A. (2018). Intersectionality dis/ability research: How dis/ability research in education engages intersectionality to uncover the multidimensional construction of dis/abled experiences. *Review of Research in Education*, 42(1), 286-311, p. 307. Retrieved February 27, 2023, from <https://doi.org/10.3102/0091732X18762439>
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- 7 U.S. Department of Education (2018). *Civil rights data collection*. Washington, DC: U.S. Department of Education. Retrieved December 16, 2022, from <https://ocrdata.ed.gov/estimations/2017-2018>
- 8 Individuals With Disabilities Act, 20 U.S.C. §1400(d) (2004).
- 9 IDEAs that Work (2023) Office of Special Education Programs technical assistance network. Retrieved February 27, 2023, from https://osepideasthatwork.org/sites/default/files/OSEP%20TA%20Center%20Infographic_508.pdf
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- 11 *Endrew F. v. Douglas County School District*, 580 U.S. ____ (2017).
- 12 Individuals With Disabilities Act, 20 U.S.C. §1414(D)(1)(A) (2004).
- 13 Individuals With Disabilities Act, 20 U.S.C. §1414(D)(1)(B) (2004).
- 14 As members of the IEP team, for example.
- 15 *Schaffer v. Weast*, 546 US 49 (2005).
- 16 Lewis, M.M., Garces, L.M., & Frankenberg, E. (2019). A comprehensive and practical approach to policy guidance: The Office for Civil Rights’ role in education during the Obama administration. *Educational Researcher*, 48(1), 51-60. Retrieved February 27, 2023, from <https://journals.sagepub.com/doi/pdf/10.3102/0013189X18801549>

- 17 Leadership Conference on Civil and Human Rights. (2022). *Leadership conference joint-comment letter supported updated Section 504 regulations*. Retrieved May 23, 2023, from <https://civilrights.org/resource/leadership-conference-joint-comment-letter-supporting-updated-section-504-regulations/>
- 18 34 C.F.R. § 104.3(j).
- 19 Americans With Disabilities Act Amendments Act of 2008, 42 U.S.C.A. § 12101 (2008). The Amendments Act of 2008 “not only amends the ADA but also includes a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504 . . . [and] emphasizes that the definition of ‘disability’ in Section 504 . . . should be interpreted to allow for broad coverage.” U.S. Department of Education (2011). Questions and answers on the ADA Amendments Act of 2008 for students with disabilities attending public elementary and secondary schools. Washington, DC: U.S. Department of Education, Office of Civil Rights. Retrieved February 20, 2023, from <https://www2.ed.gov/print/about/offices/list/ocr/docs/dcl-504faq-201109.html>
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- 21 U.S. Department of Education. (2020.) *Protecting students with disabilities: Frequently asked questions about Section 504 and the education of children with disabilities*. Retrieved May 23, 2023, from <https://www2.ed.gov/about/offices/list/ocr/504faq.html>
- 22 For additional discussion of the similarities and differences, see Huefner, D.S. & Herr, C.M. (2012). *Navigating special education law and policy*. Verona, Wisconsin: Attainment Company.
- 23 Crenshaw, K.W. (2017). *On intersectionality: Essential writings*. The New Press.
- 24 Collins, P.H. & Bilge, S. (2020). *Intersectionality*. John Wiley & Sons.
- 25 In the research literature, this line of inquiry is known as intersectionality, which “accounts for the complex, overlapping, and cumulative effects associated with having more than one identity marker that can lead to marginalization within institutions and structures even when they claim to be advancing equity Notions of power and privilege are central to the use of intersectionality.” Samson, J.F. & Cavendish, W. (2021). Introduction to intersectionality-based analysis. *Intersectionality in Education: Toward More Equitable Policy, Research, and Practice*, p. 2. Teachers College Press.
- 26 For the purpose of this brief, we define ableism as “negative or prejudicial beliefs about disability that arise from, and result in, the systemic oppression of people with disabilities. Ableism occurs because of the persistent devaluing of disability and the dominance of viewpoints in which disability is cast as an inherently flawed and undesirable state of being.” Baglieri, S. & Lalvani, P. (2019). *Undoing ableism: Teaching about disability in K-12 classrooms*. Routledge. See also: Manaseri, H. & Bornstein, J. (2018). Dismantling ableism: The moral imperative for school leaders. *Review of Disability Studies: An International Journal*, 14(3). Retrieved February 27, 2023, from <https://rdsjournal.org/index.php/journal/article/view/772>
- 27 Notable special education scholars, such as Alfredo Artiles, have applied an intersectional lens to understand complex areas of special education policy and practice. Artiles, A.J. (2013). Untangling the racialization of disabilities. *Du Bois Review: Social Science Research on Race*, 10, 329-347. Retrieved February 27, 2023, from <https://doi.org/10.1017/S1742058X13000271>
- 28 We define *power* as the ability to exert influence over others and the allocation of resources.
- 29 Office of Civil Rights (2022, July). Supporting students with disabilities and avoiding the discriminatory use of student discipline under section 504 of the Rehabilitation Act of 1973. U.S. Department of Education. Retrieved February 27, 2023, from <https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance>.

OCR also recently released guidance related to student discipline under Section 504 clarifying that “A student may experience multiple forms of discrimination at once. In addition, a student may experience discrimination due to the combination of protected characteristics, a form of discrimination often called intersectional discrimination.”

- 30 We intentionally capitalize Black and other ethnic minorities and use lowercase when referencing ‘white’ because minorities “constitute a specific cultural group and, as such, require denotation as a proper noun Some who grapple with this issue take the position that white must also be capitalized if Black is, however, this seems to presume a greater parallelism between these racial designations than their histories suggest. Of the myriad differences is the fact that while white can be further divided into a variety of ethnic and national identities, Black represents an effort to claim a cultural identity that has historically been denied.” Crenshaw, K.W. (2011, July). Twenty years of Critical Race Theory: Looking back to move forward. *Connecticut Law Review*, 43(5), 1253-1352. Retrieved February 14, 2023, from https://opencommons.uconn.edu/law_review/117/
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- 32 We refer to accommodations broadly, because the literature often does not distinguish between Section 504 and IDEA accommodations.
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- 34 Morgan, J.N., (2020). Toward a DisCrit approach to American law. In A.A. Subini, A.F. Beth, & J.C. David (Eds.), *DisCrit Expanded: Reverberations, Ruptures, and Inquiries* (pp. 13-30). New York, NY: Teachers College Press.

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