

EDUCATION LAW INTO PRACTICE

SCHOOL DISTRICT RATES OF § 504-ONLY STUDENTS IN K–12 PUBLIC SCHOOLS: THE LATEST UPDATE*

by

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This article addresses the school district level as a follow-up to a recent published analysis of the U.S. Department of Education’s Civil Rights Data Collection (CRDC)¹ that focused on the state rates of “§ 504-only” students for the most recent available year, which is 2020–21.² Along with finding a national rate of 3.26%, the state-rates analysis found percentages in 2020–21 ranging from a top group consisting of Texas (6.88%), New Hampshire (6.69%), Louisiana (6.22%), and Connecticut (6.09%) to a bottom tier consisting of Nebraska (1.51%), Wisconsin (1.43%), Mississippi (1.20%), and New Mexico (1.12%).³ The national rate represented a continuing increase for each CRDC iteration since 2009–10, which was the first full school year after the expanded eligibility standards of the Americans with Disabilities Act (ADA) amendments went into effect.⁴

Method

The purpose of this analysis is to provide the district-level rates of § 504-only students in 2020–21. As such, this analysis parallels a district-level sequel to the state rates for 2017–18.⁵ More specifically, the previous article examined the 2017–18 data for school

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1. On a biannual basis starting in 2009–10, the Department has provided these data for the nation’s public schools based on a long survey form. Due to the COVID-19 pandemic, the Department postponed the data collection in 2019–20 to 2020–21. For the CRDC website, see <https://civilrightsdata.ed.gov/data>.

2. Perry A. Zirkel & Gina L. Gullo, *State Rates of 504-Only Students in Public Schools: The Latest Update*, 417 EDUC. L. REP. 929 (2024). In light of the broader definition of disability under § 504 than under

the Individuals with Disabilities Education Act (IDEA), “§ 504-only” refers to the students who qualify for eligibility and receive services under § 504 but not under the IDEA. More specifically, these students are typically identifiable because they have documentation commonly referred to as a 504 plan rather than the individualized education plan (IEP) that the IDEA requires. *Id.* at 929 nn.5–7.

3. *Id.* at 934–35.

4. 42 U.S.C. § 12102(1)(A). The expansion applied to the interpretation of the second and third essential eligibility elements: (1) physical or mental impairment that (2) substantially limits (3) one or more major life activities. *See, e.g.*, Perry A. Zirkel, *The ADAA and Its Effect on Section 504 Students*, 22 J. SPECIAL EDUC. LEADERSHIP 3 (2009). The effective date of the amendments was January 1, 2009. Congress incorporated in these revisions directly in § 504. 29 U.S.C. § 705(20)(B).

5. Perry A. Zirkel & Gina L. Gullo, *School District Rates of 504-Only Students: The Next Update*, 385

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districts with enrollments of more than 1,250 students, identifying (a) the fifty districts with the highest prevalence rates of § 504-only students, which ranged from 11.35% to 16.72%, and (b) the most sizeable 50 of the 243 districts that reported having zero § 504-only students.⁶

The source is the CRDC public-use data file, which includes the most complete set of § 504-only enrollment data along with a host of other variables for each public school and school district in the nation.⁷ The procedure follows the relatively straightforward steps of the 2017–18 district-level analysis.⁸ Again, we excluded districts with 1,250 or fewer enrolled students because (1) rather routine fluctuations in the number of § 504-only students would result in seemingly substantial changes in their percentage rates, and (2) these smaller districts included a large concentration of atypical entities, such as detention, early learning, and transition centers.⁹ Finally, per the pattern in the previous analyses,¹⁰ the examination here is limited to the top and bottom segments of the percentage range.¹¹

Top Group

The top group was limited to the fifty sizeable public school districts with the highest rates of § 504-only students.¹² In the initial array of the qualifying districts, we checked the district with the highest percentage, because it was distinctly higher than the percentages of the other districts in the top fifty and because it was found to be clearly erroneous in the

EDUC. L. REP. 24 (2021). Thus, much of the structural content here is repeated from that article, with the differentiating focus being on the new data.

6. *Id.* at 12–13.

7. For a copy of the “downloadable data files,” “CRDC school survey form,” “CRDC district survey form,” and “data file user’s manual” for 2020–21, see <https://civilrightsdata.ed.gov/data>. Although the response rate approximated 100% and the CRDC employed various quality checks, these results are not devoid of errors, largely in the submission process. U.S. Department of Education Office for Civil Rights, 2020–21 Civil Rights Data Collection User’s Manual: Release 1, at 7–14 (2023), <https://civilrightsdata.ed.gov/data>.

8. First, we accessed the “downloadable data files” for 2020–21 at <https://civilrightsdata.ed.gov/data>. Second, we extracted the total enrollment, number of § 504-only students, and number of IDEA students for each school. Third, we re-coded schools with enrollment or 504-only data indicating “reserve codes” or “system errors,” as identified in the CRDC Data File User’s Manual (<https://civilrightsdata.ed.gov/assets/downloads/2020-21%20User's%20Manual.pdf>), with entries of “0.” Fourth, we used an Excel pivot table to tabulate the sum enrollment and § 504-only students across all schools in each district. Fifth, per the method in the predecessor article, we deleted school

districts with a total enrollment of 1,250 or fewer students and calculated both the § 504-only incidence rate and rank for each school district with more than 1,250 students.

9. However, as tradeoff, this minimum size also resulted in a limited representation charter schools due to their smaller average size and tendency to include only a single or very limited number of schools within the charter local education agency. In 2020–21, the average enrollment of charter schools was approximately 470 students. Jamison White, *How Many Charter Schools and Students Are There?* (2023), <https://data.publiccharters.org/digest/charter-school-data-digest/how-many-charter-schools-and-students-are-there/>.

10. *E.g.*, Zirkel & Gullo, *supra* note 5, at 26–27.

11. Nevertheless, given the importance to the broad segment between these polar extremes, we shall post on the first author’s website, perryzirkel.com, the complete list of school districts with enrollments exceeding 1,250 students in descending order of § 504-only percentage for 2020–21.

12. As in the relatively brief predecessor article, “sizeable” here refers simply to districts with enrollments of over 1,250 students, the number fifty is based on space limitations.

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predecessor article.¹³ As a result of this confirmed error, we eliminated this district from the top group.¹⁴

Table 1 identifies the top fifty school districts, referred to generically as “local education agencies,” in rank order, along with their state, total enrollment, and § 504-only percentage. The two other features of this table are (1) shading in the state column to show whether the district rate noticeably correlates with the state rate,¹⁵ and (2) addition of an asterisk to identify charter school entities.¹⁶

A review of Table 1 reveals that the fifty schools range from a high of 17.96%, which is 5.5 times the national average, down to 11.35%, which is 3.5 times the national average. The aforementioned¹⁷ shading of the state column suggests a notable correlation between these districts and their state § 504-only rates; forty-seven of the fifty school districts were in the top third of states,¹⁸ with the remaining three being in New York, which is in the middle group of states.¹⁹ Finally, the entries in the local education agency column reveal that only two of the top districts were charter school entities.

Bottom Group

The selection for the bottom group was more problematic because approximately 169 sizeable districts reported not having a single § 504-only student in 2020–21.²⁰ As a result, Table 2 is limited to the fifty of these districts with the highest enrollments.

Table 2 shows that nine of these districts, by far led by Broward County Schools, have enrollments of more than 10,000 students. Especially but not exclusively for these highest-enrollment districts, the complete absence of any § 504-only students seriously calls into question their identification or reporting practices.²¹ The differential shading in the state column suggests a much more moderate relationship between the district and state § 504-only rates in the bottom than in the top group; only a slight majority of the schools were in the bottom third of the states, with the remainder in states that were in the top ($n=7$) or middle

13. Zirkel & Gullo, *supra* note 5, at 26 n.20. Additionally, it was the only district in the top fifty that was from the bottom ten states (Kansas being tied for 43rd in 2020–21). Zirkel & Gullo, *supra* note 2, at 934.

14. E-mail from Lorelei Krum, Admin. Ass’t to the Superintendent, Paola Unified Sch. Dist. (Kansas), to Perry A. Zirkel (Jan. 11, 2024, 17:11 EST) (correcting rate from 24.60% to 2.12%) (on file with first author). The ascribed problem was counting the IDEA students not only alone but also in the § 504-only category. *Id.*

15. The dark-gray and light-gray shading respectively indicate states in the top and middle thirds of the fifty-one jurisdictions for incidence rates of § 504-only students in 2020–21. Zirkel & Gullo, *supra* note 2, at 934–35.

16. For districts neither expressly named charters or traditional local education agencies, we checked the website to determine the status. Additionally, district #49 in the top group is unusual because it is a private school that serves as the public high school (grades 9–12) for six neighboring communities. <https://my.doe.nh.gov/profiles/profile.aspx?s=20395&year=2016>.

17. *Supra* note 15 and accompanying text.

18. Texas accounted for three quarters of the top fifty states.

19. However, the state groups were thirds, thus representing a much wider segment than the top fifty districts. A correlation coefficient would much more precisely account for the individual positions within the entire state and district lists.

20. The tabulated results identified 169 districts in this zero group, but the CRDC marked schools in six of these districts with “reserve codes” (*supra* note 8). As such, the missing data might increase the following districts to above zero of § 504-only students: Crossett Sch. Dist. (AR), Billings High Sch. Dist. (MT), Potsdam Cent. Sch. Dist. (NY), Okla. Virtual Charter Acad. (OK), Kirbyville Consol. Indep. Sch. Dist. (TX), and New Berlin Sch. Dist. (WI).

21. The zero group also reflects the need for further improvements in the quality control practices of the CRDC. The absence of any § 504-only students in Broward County’s total enrollment of more than 260,000 students, for example, should have been a red flag in the CRDC review procedures.

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($n=16$) thirds of the states. Finally, only two of the districts in the zero § 504-only sample were charter school entities.

Interpretation and Conclusions

The primary finding of this district-level follow-up analysis is the strikingly wide variance in the rates of § 504-only students, ranging from almost 18% to 0% of the student population of districts with an enrollment of more than 1,250 students. In the top group, the ratio between the national average and each district's percentage rate is so pronounced as to not only suggest likely systemic over-identification,²² but also pose practical difficulties of implementing the resulting requirements of § 504 and the ADA for these high proportions of § 504-only students.²³

The bottom end is equally noteworthy. The finding of approximately 169 school districts with enrollments over 1,250 students that reported having zero students identified in the § 504-only category seems to suggest two primary and possibly combined explanations. First, converse to the top group of school districts, at least some of the districts at the other extreme represent a significant pattern of suspected under-identification. In light of the broad definition of disability under § 504, as liberalized in the ADA amendments of 2008 and the resulting ADA regulations of 2016,²⁴ it seems highly improbable that a district with an enrollment of more than 1,250 students would not have a single student with diabetes, Crohn's disease, a life-threatening allergy, or severe asthma in addition to students with ADHD, Asperger syndrome, or anxiety disorders who do not qualify under the IDEA but nevertheless have a resulting substantial limitation on interacting with others, concentration, or other qualifying major life activity.²⁵ The alternative or, in some cases, additional explanation, which is not at all exclusive to this "zero" group, is the lack of accurate district entries on the long CRDC survey form.²⁶

Moreover, as the shading in Tables 1 and 2 show, these remarkably high and low school district rates in comparison to the national prevalence of 3.26% appear to interrelate with the corresponding high or low ranks of the state. Yet, the relationship is far from complete or

22. The typical explanations that districts offer for such high rates include leveling the playing field and being proactive for diagnoses. *E.g.*, Douglas Belkin & Tawnell D. Hobbs, *More Students Are Getting Special Help in Grades K–12*, WALL ST. J., July 3, 2018, <https://www.wsj.com/articles/more-students-are-getting-special-help-in-grades-k-12-1530646260>. However, these rationales amount to rationalizations because they ignore (1) the specific eligibility standards of § 504, particularly the essential element of a substantial limitation in relation to most people in the general population; (2) the availability of general education interventions, without the formalities and transaction costs of § 504, for students with impairment that do not substantially limit a major life activity; and (3) the inequitable abuses in § 504 identification based on power and privilege. *See, e.g.*, MARIA M. LEWIS & RAQUEL MUÑIZ, SECTION 504 PLANS: EXAMINING INEQUITABLE ACCESS AND MISUSE (June 2023), <https://nepc.colorado.edu/publication/504-plan-ratime-to-take-the-sat-11558450347>.

23. These legal requirements include not only proce-

dural safeguards, such as periodic reevaluations and impartial hearings, but also substantive services that may extend well beyond classroom accommodations. *E.g.*, 34 C.F.R. §§ 104.3–104.36. The ADA adds a few specialized requirements, such as service animals and effective communications. 28 C.F.R. §§ 35.136 and 35.171. Additionally, unlike the IDEA, neither § 504 nor the ADA provides any federal funding, and no state has appropriated funding for § 504-only students. *See Zirkel & Gullo, supra* note 2, at 930.

24. *Supra* note 4. The 2016 ADA regulations reinforced the expansion by adding further examples of major life activities. 28 C.F.R. § 35.108.

25. Unlike § 504, the IDEA has a restricted set of impairments and requires a resulting need for special education. 20 U.S.C. § 1401(3); 34 C.F.R. § 300.8.

26. As an additional example, the reported § 504-only rate for New York City, which is the largest school district in the nation, in 2020–21 was 0.14%.

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perfect, suggesting the interplay of various other factors that vary within as well as among states, such as litigiousness, socioeconomic status, and both parent and district accommodations-actions for to high stakes, timed testing.

Almost two thirds of the districts identified in the top fifty in 2020–21 were in the top fifty in 2017–18. Although the proportion was only one fifth in the zero group, the total number in that group reduced from 243 in 2017–18 to 194 in 2020–21.²⁷ The number of charter school entities in both groups were similarly small for both 2020–21 and 2017–18, although likely due to the selected minimum for this tabulation.²⁸

To the likely extent that that these polar samplings signal a more general pattern of over- and under-identification, such practices are likely attributable to insufficient awareness of and adherence to the specific eligibility criteria under § 504.²⁹ For the adherence side, a non-negligible part of the over-identification problem is attributable at least in part to local or larger school culture that focuses on the impairment rather than the substantial limitation criteria for eligibility and other district practices that err on the side of false positives. Correspondingly, the under-identification problem is at least partially attributable to lax child find practices under § 504 at the district level. Obviously, more intensive qualitative and quantitative research is needed to identify the contributing factors for the wide variance in school district rates of § 504-only students. On the practical level, this article also reinforces the message of its predecessor analyses that to correct the institutional inertia of over- and under-identification at the district level public school leaders should provide more careful attention to professional development and systematic procedures adhering to the legal standards for eligibility under § 504.³⁰ Finally, similarly following the previous pattern,³¹ the follow-up of this article will extend the analysis to the school-level data for 2020–21.

27. Zirkel, *supra* note 5, at 27 n.30. The corresponding number for the zero group for 2015–16 was 327 school districts, suggesting a gradual mitigation of this problem. *Id.* A December 18, 2021 letter to OCR from a consortium of advocacy organizations called for CRDC corrective action about the zero-reporting districts, although it is not at all clear whether this notice contributed to the reduction to 194 in 2020–21, <https://www.ndrn.org/resource/ccd-education-task-force-letter-on-section-504/>.

28. *Supra* note 9.

29. For an eligibility form that summarizes these criteria,

including the interpretive standards of the ADA amendments, see Perry A. Zirkel, *Identification of 504-Only Students: An Alternate Eligibility Form*, 357 EDUC. L. REP.39 (2018). For a related discussion, see Perry A. Zirkel, *Avoiding Under- and Over-Identification of 504-Only Students: Pitfalls and Handholds*, 359 EDUC. L. REP. 715 (2018).

30. Zirkel, *supra* note 5, at 26.

31. Perry A. Zirkel & Gina L. Gullo, *Public School Rates of § 504 Only Students: The Next Update*, 387 EDUC. L. REP. 1 (2021).

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Table 1. Top 50 School Districts (with Enrollment > 1,250) for Rate of
“§ 504-Only” Students

RANK	STATE	LOCAL EDUCATION AGENCY	ENROLL- MENT	RATE
1	Illinois	Township High School District 113	3,435	17.96%
2	Illinois	Lake Forest Community High School District 115	1,500	16.93%
3	Texas	Pottsboro Independent School District	1,403	15.97%
4	Texas	Gatesville Independent School District	2,789	15.96%
5	New York	Briarcliff Manor Union Free School District	1,351	15.91%
6	Texas	Lake Dallas Independent School District	3,870	15.53%
7	New York	Rondout Valley Central School District	1,742	15.50%
8	Texas	China Spring Independent School District	2,868	15.45%
9	Texas	Van Alstyne Independent School District	1,866	15.38%
10	Texas	Boyd Independent School District	1,268	15.06%
11	Texas	Sulphur Springs Independent School District	4,250	14.94%
12	Texas	Highland Park Independent School District	6,619	14.70%
13	Texas	Cotulla Independent School District	1,264	14.56%
14	Texas	Franklin Independent School District	1,256	14.41%
15	Texas	Godley Independent School District	2,414	14.33%
16	Texas	Vidor Independent School District	4,224	14.32%
17	Idaho	Blaine County School District	3,180	14.28%
18	Texas	Pleasant Grove Independent School District	2,221	14.27%
19	Texas	Cumberland Academy*	1,960	14.18%
20	Texas	Buna Independent School District	1,490	14.09%
21	Texas	Iowa Park Consolidated Independent School District	1,907	14.00%
22	Texas	Burnet Consolidated Independent School District	3,112	13.95%
23	Washington	Bainbridge Island School District	3,689	13.82%
24	Louisiana	Lusher Charter School*	1,883	13.65%
25	Texas	Bowie Independent School District	1,693	13.64%
26	Louisiana	Claiborne Parish School District	1,659	13.62%
27	Texas	Rains Independent School District	1,704	13.62%
28	Texas	Pleasanton Independent School District	3,426	13.60%
29	Illinois	New Trier Township High School District 203	4,027	13.56%
30	Texas	Anna Independent School District	3,976	13.41%
31	Texas	Lorena Independent School District	1,741	13.33%
32	Texas	Texarkana Independent School District	7,651	13.28%
33	Texas	McKinney Independent School District	23,356	13.28%
34	Texas	Jourdanton Independent School District	1,567	13.15%
35	Texas	Copperas Cove Independent School District	8,047	13.12%
36	Texas	Shallowater Independent School District	1,708	13.11%
37	Texas	Alamo Heights Independent School District	4,850	12.93%
38	Texas	Eanes Independent School District	7,898	12.93%
39	Texas	Caldwell Independent School District	1,710	12.92%
40	Texas	Celina Independent School District	2,964	12.92%
41	Massachusetts	Ludlow Public Schools	2,384	12.92%
42	Texas	Jasper Independent School District	2,231	12.91%
43	Connecticut	Newtown School District	4,033	12.77%
44	Texas	Belton Independent School District	12,607	12.75%
45	New York	Somers Central School District	2,800	12.71%
46	Texas	Caddo Mills Independent School District	1,993	12.69%
47	Texas	Devine Independent School District	1,987	12.68%
48	Texas	Graham Independent School District	2,263	12.59%
49	New Hampshire	Pinkerton Academy	3,252	12.58%
50	Texas	Dripping Springs Independent School District	7,282	12.37%

* Designates a charter school that is a local education agency (LEA).

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Table 2. Most Sizeable 50 of the Approximately 169 Districts with Enrollment > 1,250 Reporting Zero “§ 504 Only” Students

RANK	STATE	LOCAL EDUCATION AGENCY	ENROLLMENT
1	Florida	Broward County Public Schools	260,212
2	Arizona	Peoria Unified School District	35,498
3	Indiana	Fort Wayne Community Schools	28,451
4	Maryland	Charles County Public Schools	26,897
5	Oregon	Bend-Lapine Administrative School District 1	16,087
6	Virginia	Alexandria City Public Schools	15,844
7	California	Modesto City High School District	14,626
8	Wyoming	Natrona County School District #1	13,103
9	Pennsylvania	Hazleton Area School District	11,477
10	Alaska	Galena City School District	9,403
11	Tennessee	Sullivan County Schools	8,633
12	California	Alisal Union School District	8,301
13	Virginia	Manassas City Public Schools	7,606
14	New York	Mount Vernon School District	7,210
15	California	Redwood City Elementary School District	6,758
16	Tennessee	Lawrence County Schools	6,673
17	Missouri	Lincoln County R-III School District	6,602
18	New York	Hempstead Union Free School District	6,339
19	Arizona	Academy of Mathematics & Science South Inc.*	5,891
20	California	Whittier City Elementary School District	5,889
21	Michigan	Taylor School District	5,831
22	Arizona	Phoenix Elementary District	5,675
23	Montana	Billings High School District	5,570
24	Arizona	Isaac Elementary District	5,303
25	Indiana	Michigan City Area Schools	5,291
26	California	El Centro Elementary School District	5,286
27	Arizona	Humboldt Unified District	5,243
28	California	Hollister School District	5,200
29	Minnesota	School District 197	5,037
30	New York	Pine Bush Central School District	4,925
31	Indiana	Gary Community School Corporation	4,770
32	Arizona	Buckeye Union High School District	4,770
33	Illinois	Belleville Township High School District 201	4,728

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RANK	STATE	LOCAL EDUCATION AGENCY	ENROLL- MENT
34	California	Windsor Unified School District	4,685
35	Illinois	Proviso Township High School District 209	4,542
36	Wisconsin	New Berlin School District	4,274
37	Nebraska	Columbus Public Schools	4,117
38	Mississippi	Greenville Public Schools	4,032
39	Oklahoma	Oklahoma Virtual Charter Academy*	4,012
40	West Virginia	Mineral County Schools	4,000
41	Missouri	Sikeston R-6 Schools	3,973
42	New Mexico	Belen Consolidated Schools	3,711
43	Massachusetts	Dracut Public Schools	3,660
44	New Jersey	Teaneck School District	3,595
45	Illinois	Freeport School District 145	3,571
46	Arizona	Casa Grande Union High School District	3,560
47	Minnesota	Albert Lea Public School District	3,445
48	Illinois	Community Consolidated School District 93	3,342
49	Tennessee	Franklin Special School District	3,313
50	Arizona	Chinle Unified District	3,312

* Designates charter school that is an LEA.