

## 504 Regulations Will Be Amended: Get Your Comments In

By **Adrienne B. Kirshner & David Hirt**

The U.S. Department of Education made a recent announcement that it intends to strengthen and protect rights for students with disabilities by amending the regulations implementing Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Federal law that prohibits discrimination on the basis of disability in public and private programs and activities that receive federal financial assistance, including schools.

After stating the Department’s Office of Civil Rights (“OCR”) will solicit public comments on how to improve Section 504, the announcement refers to May being Mental Health Awareness Month, President Biden’s Unity Agenda including a strategy to address the national mental health crisis, and that the input OCR will solicit and listen to “will include input from those people with disabilities who also have mental health needs and their advocates.” Based on the language of the announcement, it appears as if the primary focus of potential Section 504 amendments will be on issues concerning mental health and the mental health crisis.

OCR’s announcement seeking input on potential amendments also follows two recent events concerning implementation of Section 504. First, as mentioned in the announcement, on April 28, 2022, OCR published a resolution agreement finding the second largest school district in the country failed to provide FAPE to students under IDEA and Section 504 during remote learning by: (1) limiting the services that were provided to qualified students with disabilities based on considerations other than their individual needs; (2) not accurately or sufficiently tracking accommodations and services provided to students with disabilities; and (3) failing to develop and implement plans to adequately remedy instances in which FAPE was not provided to eligible students with disabilities. Second, on April 28, 2022, the United States Supreme Court issued its decision in *Cummings v. Premier Rehab Keller PLLC*, S. Ct. No. 20-219, holding that Section 504 does not permit awards of damages for emotional distress.

As input on potential amendments to the Section 504 regulations is not limited to issues concerning mental health, there are many issues that might be raised during this process. For example, one issue that has troubled districts for years is what regulations not found in Section 504, but are found in IDEA, must be followed in the Section 504 context, e.g. Manifestation Determination Reviews, obtaining surrogate parents when necessary. Therefore, districts should consider if they want to provide input regarding their struggles with Section 504 regulations and what amendments they would find helpful.

If you would like more information about the Department of Education’s request for input or assistance in preparing such comments, please contact any of the listed Roetzel attorneys.

**Doug Spiker**  
Practice Group Manager  
Employment Services  
216.696.7125 | [dspiker@ralaw.com](mailto:dspiker@ralaw.com)

**Lewis Adkins**  
Practice Group Manager  
Public Law, Regulatory and Finance  
216.616.4842 | [ladkins@ralaw.com](mailto:ladkins@ralaw.com)

**Susan Keating Anderson**

Practice Group Manager  
Education Law Group  
216.232.3595 | [sanderson@ralaw.com](mailto:sanderson@ralaw.com)

**Karen Adinolfi**

330.849.6773 | [kadinolfi@ralaw.com](mailto:kadinolfi@ralaw.com)

**Aretta Bernard**

330.849.6630 | [abernard@ralaw.com](mailto:abernard@ralaw.com)

**Michael Brohman**

312.582.1682 | [mbrohman@ralaw.com](mailto:mbrohman@ralaw.com)

**Diana M. Feitl**

216.615.4838 | [dfeitl@ralaw.com](mailto:dfeitl@ralaw.com)

**Barry Freeman**

216.615.4850 | [bfreeman@ralaw.com](mailto:bfreeman@ralaw.com)

**Morris Hawk**

216.615.4841 | [mhawk@ralaw.com](mailto:mhawk@ralaw.com)

**David Hirt**

216.329.0558 | [dhirt@ralaw.com](mailto:dhirt@ralaw.com)

**Paul Jackson**

330.849.6657 | [pjackson@ralaw.com](mailto:pjackson@ralaw.com)

**Adrienne Kirshner**

216.456.3850 | [akirshner@ralaw.com](mailto:akirshner@ralaw.com)

**Justin P. Markey**

330.849.6632 | [jmarkey@ralaw.com](mailto:jmarkey@ralaw.com)

**Stephanie Olivera Mittica**

330.849.6671 | [smittica@ralaw.com](mailto:smittica@ralaw.com)

**Nancy Noall**

216.820.4207 | [nnoall@ralaw.com](mailto:nnoall@ralaw.com)

**Sherri Warner**

614.723.2110 | [swarner@ralaw.com](mailto:swarner@ralaw.com)

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