

# SPECIAL EDUCATION LEGAL ALERT

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This month's alert is an update of the legal alert for July 2018, which provided the state-by-state percentages of so-called "504-only" students as of 2015–16, which is the latest available data from the U.S. Department of Education's Civil Rights Data Collection (CRDC). The first is a summary of the district-level rates, and the second is a summary of the school level rates. The full analyses are available at [perryzirkel.com](http://perryzirkel.com), where you can also sign up for automatic e-mailing of the future alerts under "Monthly Legal Updates."

<p><b>The follow-up analysis of the rate of "504-only" students (i.e., those with 504 plans, not "double-covered" students with IEPs) at the school district level, based on the 2015–2016 CRDC, revealed widespread variance. The full version of this analysis is available under the Section 504 and the ADA subheading of the Publications list on <a href="http://perryzirkel.com">perryzirkel.com</a>—“School District Rates of 504-Only Students.” Limited to districts with enrollments of at least 1250 students, a spreadsheet, which lists the districts in descending order of 504-only percentage, is available on the homepage of this website under “What’s New.”</b></p>	
The 50 top districts ranged from a high of 15.5% down to 9.8%, which is slightly more than four times the national average of 2.3%. Most were in the states with the high 504-only rates, and only one was a charter school.	These high rates seem to provide reasonable suspicion of over-identification, although alternative explanations, such as data errors or district peculiarities, may be contributing factors. In general, over-identification is often attributable to insufficient application to the second and third eligibility criteria—major life activity and substantial.
The bottom end of the list is more predominant. Specifically, 327 districts with at least 1250 students had 0% (i.e., not a single) 504-only student. The correlation with the state rate was less pronounced than for the top group, and the number of special status districts, such as those that were vo-tech or charter schools, was still relatively small.	Compared to over-identification the high end, these zero percentages are even stronger indications of under-identification. Again, other contributing factors may explain this reported zero rate, careful attention is warranted in terms of the prevailing procedures and practicing for identifying eligibility for 504 plans. Among other resources, my website provides an eligibility form and by the end of this year will provide the details for Lehigh University’s next 504 Institute, which will be on campus on June 27–28, 2019.
As stated in the intro, you can check the rate for your or any other district with an enrollment of at least 1250 students on a spreadsheet posted on the homepage of <a href="http://perryzirkel.com">perryzirkel.com</a> . The full data, including the 504-only figures for smaller districts, are available at the CRDC website, <a href="https://ocrdata.ed.gov/">https://ocrdata.ed.gov/</a>	If you have specific corrections for the CRDC figures, which are based on survey submissions from each district, please report them directly to CRDC. On a less belated basis, it is advisable to double-check for errors in submission for the 2017-18 iteration of the biannual CRDC survey.

The follow-up analysis of the rate of “504-only” students, based on the 2015–2016 CRDC, revealed even wider variance at the school level. The full version of this analysis is available under the Section 504 and the ADA subheading of the Publications list on [perryzirkel.com](http://perryzirkel.com)—“School Rates of 504-Only Students. Limited to schools with enrollments of at least 250 students, a spreadsheet, which lists the districts in descending order of 504-only percentage, is available on the homepage of this website under “What’s New.”

<p>The 50 schools with the highest rates ranged from a high of 34.7% down to 18.8%, which is eight times the national average of 2.3%. The correlation with state rates was moderate, and approximately one third of these schools had a special focus or charter status.</p>	<p>The practical problems of implementing the 504 plans and related requirements of Section 504 in these schools is, in a word, mind-boggling, particularly in light of the unavailability—in contrast with the IDEA—of federal and state funds. As with the corresponding top group at the district level, these schools appear to warrant special attention to possible over-identification.</p>
<p>The bottom end was even more striking in extent as well as rate. More specifically, 12,229 schools with an enrollment of at least 250 reportedly did not have a single student with a 504 plan. The correlation with the state rate was limited and, again, approximately one third of the schools had a special focus or charter status.</p>	<p>These 0% relatively sizable schools appear to signal significant pattern of suspected under-identification in light of (a) Section 504’s broad definition of eligibility that—unlike the IDEA—does not require educational impact; (b) the ADA amendments effective expansion of the applicable eligibility standards ; and (c) the rising diagnoses of attention deficit disorder, asthma, food allergies, and anxiety disorders in recent years.</p>
<p>As stated in the intro, you can check the rate for your or any other school with an enrollment of at least 250 students on a spreadsheet posted on the homepage of <a href="http://perryzirkel.com">perryzirkel.com</a>. The full data, including the 504-only figures for smaller districts, are available at the CRDC website, <a href="https://ocrdata.ed.gov/">https://ocrdata.ed.gov/</a></p>	<p>Again, corrections should be reported to CRDC and reviewed on a timelier basis for the 2017-18 data submission. In any event, given the relative inattention to the child find and identification requirements of Section 504 in comparison to those under the IDEA, school leaders should review their current policies and practices for adherence to the applicable eligibility standards for 504 plans.</p>