



Section 504 of the 1973 Rehabilitation Act was the United States' first disability civil rights law. It prohibits discrimination against people with disabilities in programs that receive federal financial assistance, like public schools. It also prohibits retaliation against educators who advocate on behalf of their disabled students or fellow employees. Section 504 works together with the Americans with Disabilities Act (ADA) to protect educators from discrimination and retaliation.

This guidance describes the protections that Section 504 provides and outlines the process for raising a complaint of disability discrimination or retaliation in violation of Section 504.

### Disability Discrimination

Disability discrimination occurs when an applicant or employee is treated less favorably because of a disability. A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, seeing, hearing, speaking, breathing, or learning). A person is also protected from disability discrimination if they have a record of having such a condition or if they are viewed as having that condition by others.

In the employment context, prohibited discrimination occurs when an individual experiences an adverse employment action due to a protected characteristic (such as a disability). Being terminated, demoted, or not being selected for a promotion is an adverse employment action. The law does not prohibit:

- Being treated differently because of personality differences or conflicts;
- Being treated differently, including being provided different pay or awards, based on different work performance;
- Being disciplined or terminated due to poor performance or conduct;
- Being treated poorly by a supervisor who treats all employees poorly;<sup>1</sup>
- Being treated differently based on individual merit, such as talent, skills, and other qualifications.

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<sup>1</sup> While objectionable, workplace bullying is not illegal unless it also amounts to discrimination and/or harassment based on a protected characteristic under state and/or federal law (i.e. disability, age, race, etc).



Unlawful harassment is verbal or physical conduct that denigrates, shows hostility, or shows aversion to a person because of their disability, or their perceived disability, and the conduct:

- Has the purpose or effect of creating an intimidating, hostile, or offensive work environment;
- Has the purpose or effect of unreasonably interfering with an individual's work performance; or
- Otherwise adversely affects an individual's employment opportunities.

Utilizing slurs, negative stereotypes, threats, or negative acts related to a person's disability, even if the person doing such actions claims that he or she is "only joking" can amount to prohibited unlawful harassment. Written or graphic material that denigrates or shows hostility related to a person's disability can also support such a claim. Such materials can include documents and information transmitted via social media, e-mail, text messages, or other electronic media.

An employer has a legal duty to take action to stop harassment and discrimination as soon as management learns of it. In some cases, an employer will be held responsible for harassment committed by a manager or supervisor, even if no one else knew what was occurring.

### *Accommodating Disabilities at Work*

Employers are required to provide *reasonable* accommodation to an employee or job applicant with a disability. This does not mean the exact accommodation the employee or job applicant wants. If more than one accommodation works, the employer may choose which one to provide.

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

An employer does not have to provide an accommodation if doing so would cause undue hardship. Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, or the type of its operation. An employer may not refuse to provide an accommodation just because it involves some cost.

### *Asking About Disability*

There are strict limits on when an employer may ask job applicants medical questions, to take a medical exam, or to identify a disability. For example, an employer may not ask job applicants to answer medical questions or to take a medical exam before extending a job offer. Employers are also not allowed to ask job applicants if they have a disability (or to ask about the nature of an obvious disability). An employer may ask job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.

Once a person is hired and started work, an employer generally can only ask medical questions or require a medical exam if the employer needs medical documentation to support an employee's request for an accommodation or if the employer believes that an employee is not able to perform a job successfully or safely because of a medical condition.



## Student Protections

Under Section 504, students in public schools are protected from disability discrimination. This means that disabled students cannot be excluded from receiving the benefits of a public education. Accordingly, public schools are required to provide a “free appropriate public education” (FAPE) to each qualified student with a disability, regardless of the nature or severity of the disability. One way that school districts can comply with the Section 504 FAPE standard is by implementing an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA).

Section 504 requires school districts to do the following:

- Have procedures to evaluate and place students with disabilities and ensure that students are not misclassified or inappropriately placed;
- Engage in the periodic reevaluation of students who have been provided with services and prior to a significant change in placement;
- Provide regular or special education and related aids and services so that the educational needs of disabled students are met as adequately as non-disabled students;
- Educate disabled students with non-disabled students to the maximum extent that this is appropriate for the students with disabilities;
- Have procedures designed to inform parents of school district actions/decisions and to provide parents with a process to challenge those actions/decisions, including notice, an opportunity for parents to review their child’s records, an impartial due process hearing, and a review procedure.

Section 504 also requires that school district facilities be accessible to those with disabilities<sup>2</sup> and that students with a disability receive an equal opportunity to participate in athletics and extracurricular activities. In addition, Section 504 prohibits disability-based harassment and bullying by peers that is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the school’s educational programs (as in, creates a hostile environment). When a school district knows or reasonably should know of possible disability-based harassment, it must take immediate and appropriate steps to investigate what occurred. If harassment did occur, the school district must take prompt and effective steps to end the harassment and prevent the harassment from recurring.

Because discriminatory practices are often only raised and fixed when educators, parents, and others can report such practices freely to school administrators or to the government, Section 504 protects educators against retaliation for reporting discrimination and for their advocacy on behalf of their students.

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<sup>2</sup> Accessibility requirements for facilities depends on the date the facilities was built or altered.



## Retaliation

Section 504 of the Rehabilitation Act provides protection against retaliation. Any individual, disabled or not, is protected from retaliation for exercising his or her rights. Retaliation occurs when an employee is punished for engaging in legally protected activity such as reporting discrimination.

An individual may not be subject to changes in the terms and conditions of his or her employment for:

- Inquiring about legal rights under employment laws or the employer’s harassment or discrimination policy;
- Reporting or complaining about possible discrimination and/or harassment; or
- Assisting in a complaint investigation, including providing truthful information about discrimination and/or harassment.

## Advocacy Protections

Under Section 504 of the Rehabilitation Act, advocacy on behalf of disabled students on issues related to their civil rights is protected activity and retaliation for such advocacy is prohibited. The federal regulations interpreting Section 504 make clear that the failure to meet the “individual educational needs” of the disabled violates the Rehabilitation Act and that the implementation of appropriate IEP’s is one way to abide by the law. Accordingly, an educator who complains about and advocates for students concerning potential IDEA violations is protected under Section 504.

For example, complaints by a speech-language pathologist to school district administrators that the school district was failing to deliver services to special education students by not providing timely and accurate caseload lists was advocacy protected from retaliation under the Rehabilitation Act and the ADA.<sup>3</sup> Similarly, a public school psychologist’s complaints about potential IDEA violations was found to be activity protected from retaliation under Section 504.<sup>4</sup> So too a court found that a special education teacher who was constructively discharged after voicing concerns to her supervisors that the special education services provided did not comply with the law and who filed a complaint with the U.S. Department of Education regarding those concerns was permitted to sue for retaliation under Section 504.<sup>5</sup>

In order for an educators’ activity to be protected against retaliation, an educator must be doing more than assisting or working with special education students. Courts have found that in order for activity to be protected under the ADA and/or Rehabilitation Act, the educator must be advocating for special education students or protesting unlawful activity or discrimination against special education students. So, for instance, an educator making complaints to school district officials regarding IDEA compliance, writing critical letters regarding implementation of

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<sup>3</sup> *Reinhardt v. Albuquerque Public School Bd. of Educ.*, 595 F. 3d 1126 (10th Cir. 2010).

<sup>4</sup> *Sweet v. Tigard–Tualatin Sch. Dist.*, 124 Fed.Appx. 482 (9th Cir.2005).

<sup>5</sup> *Barker v. Riverside County Office of Educ.*, 584 F.3d 821 (9th Cir.2009).



IEP's, protesting against discrimination faced by special education students, or expressing support for a co-workers advocacy on behalf of special education students, would all be considered to be engaged in protected activity under federal law. Schools are prohibiting from retaliating against educators for engaging in such behavior. However, an educator logging information to ensure compliance with IDEA reporting requirements or assisting a student during class time, would not constitute protected activity. In addition, courts will only find retaliation if there is proof that the employer knew about the protected activity. Educators who engage in such advocacy should make sure their employers are on notice of their actions. In many cases, this is easily accomplished because the advocacy will be directed to their employer. In others, however, educators who are concerned about retaliation should share their concerns with their supervisors, so as to place their employer on notice of their protected activity.

Prohibited retaliation can include any substantial negative job action, such as demotion, discipline, firing, salary reduction, or job or shift reassignment. For example, it is illegal for an employer to refuse to allow an employee job training because he or she wrote a letter to the school board complaining about the lack of accommodations provided to special education students. Retaliation can also be subtle, such as excluding an employee from work meetings that are essential to his or her employment or significant changes to the work environment designed to punish an employee because he or she advocated for special education students. Minor changes in supervision or work assignments, however, will not support a viable claim of retaliation.

The U.S. Department of Education is responsible for enforcing the regulations on the education of students with disabilities under Section 504. If a school or school district is not complying with the requirements of Section 504 or IDEA in its treatment and education of students with disabilities, any concerned individual (parents, students, or educators) can file a complaint with the U.S. Department of Education, Office of Civil Rights, and they will investigate. As noted above, educators who believe that a school district is not complying with the law and who file a complaint with the Department of Education are protected from retaliation for that advocacy.

Educators who have suffered retaliation as a result of their protected activity can file a complaint regarding that retaliation with either the U.S. Department of Education or the Equal Employment Opportunity Commission. However, it is not necessary to file a retaliation complaint with a government agency before filing a lawsuit under Section 504. Educators who have suffered retaliation can directly file a lawsuit in federal district court alleging retaliation under Section 504.



## Combating Harassment and Discrimination: What You Can Do

If you believe that you are being harassed or discriminated against on the basis of your disability, or if you are experiencing retaliation, there are steps you should take to protect your rights. Each of these steps may help stop the mistreatment and improve the work environment. In addition, taking these steps will help you prove your case and preserve your right to sue, if you later decide to file a lawsuit.

- **Talk to the Offender:** While this is not required it may be the best way to stop the offensive behavior.
- **Document the Behavior:** Keep a record of the discriminatory or harassing behavior, including details of time, place, and witnesses. Also document any meetings with managers or Human Resources about the behavior. Keep the documentation in a safe place, like at home.
  - **For Retaliation Claims:** Keep a record of your advocacy on behalf of disabled students or colleagues. Also document any meetings or conversations that demonstrate that your employer or supervisors were on notice of your advocacy.
- **Complain:** Inform your employer as soon as possible that you are experiencing harassment, discrimination, or retaliation. Also contact your union for help. Make sure you are familiar with your employer's policies and procedures for filing a complaint. In many instances, complaints should be directed towards Human Resources or the department that deals with discrimination complaints (such as an Office of Equal Opportunity or an Office of Employee Engagement and Labor Relations) and may involve filling out a complaint form. It is best to make a complaint in writing (keep a copy). Make sure to be as detailed as possible. The more information that you provide, the stronger the complaint is. After a complaint is filed, the employer will investigate your complaint. Make sure to cooperate with any investigation: make yourself available to meet with the investigator and provide him or her with information regarding the discrimination or retaliation.
- **Consider Contacting an Attorney:** Reach out to your state association to find out what legal services may be available to you through the NEA Unified Legal Services Program ("ULSP"). An attorney can provide advice, evaluate the case, and keep you informed of any critical deadlines that must be met in order to proceed with a lawsuit.
- **Filing an Administrative Complaint:** Under Section 504, if you have experienced discrimination, harassment, or retaliation on the basis of your disability or because of your advocacy for those with disabilities at work, you can choose whether to file a complaint with the U.S. Department of Education, Office of Civil Rights, or with the Equal Employment Opportunity Commission (EEOC). You do not have to file an administrative complaint to bring a lawsuit in federal district court under Section 504. However, it is a legal requirement to file an administrative complaint with the EEOC or similar state agency to bring a lawsuit under the Americans with Disabilities Act (ADA). As the ADA and Section 504 both prohibit disability discrimination and retaliation, it is



advisable to file an EEOC charge in order to protect your ability to sue on the basis of all applicable federal antidiscrimination laws.

- Under the ADA, you have either 180 or 300 days to file an EEOC charge, depending on the allegations and the state in which the offensive behavior occurs. If your state has its own equal employment opportunity laws, then you have 300 days to file an EEOC charge. Otherwise, you have 180 days in which to file.
- The clock starts to run when the discriminatory acts occur.
- **Filing a Lawsuit:** If you wish to file an employment discrimination or retaliation lawsuit, you should contact an attorney in your area that specializes in workplace harassment/discrimination cases. As noted above, your local or state affiliate may be able to help you find an attorney.



### Additional Resources

- Text of Section 504 of the Rehabilitation Act (29 U.S.C. 794):  
<https://www.law.cornell.edu/uscode/text/29/794#>
- Regulations implementing Section 504 (34 C.F.R. Part 104):  
[https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr104\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title34/34cfr104_main_02.tpl)
- Filing an employment discrimination charge/complaint with the EEOC:
  - <https://www.eeoc.gov/employees/charge.cfm>
  - How to file: <https://www.eeoc.gov/employees/howtofile.cfm>
  - What to expect after you file: <https://www.eeoc.gov/employees/process.cfm>
- Information about disability discrimination from the EEOC:
  - <https://www.eeoc.gov/laws/types/disability.cfm>
- How to file a discrimination complaint with the U.S. Department of Education:
  - <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>
- Resources on the Americans with Disabilities Act:
  - <https://www.eeoc.gov/eeoc/history/ada25th/index.cfm>