

Disability Discrimination

Frequently Asked Questions

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Topic

Discrimination

**Frequently
Asked
Questions
About
Disability -
General**

What are Section 504 and Title II?

Section 504 is a federal law that prohibits any entity that receives federal financial assistance (such as grants or student loans) from discriminating against persons with disabilities.

Title II of the Americans with Disabilities Act is a federal law that prohibits state and local governments (such as public school districts, public colleges and universities, and public libraries) from discriminating against persons with disabilities.

In general, Section 504 and Title II nondiscrimination standards are the same, and in general, actions that violate Section 504 also violate Title II. However, where Title II requirements exceed Section 504 requirements, public school districts, colleges and universities, and libraries must also comply with the Title II requirements.

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What does "person with a disability" mean within the context of Section 504 and Title II?

Person with a disability means a person with a physical or mental impairment that substantially limits a major life activity; has a record of such an impairment; or is regarded as having such an impairment. The determination of whether a student has a physical or mental impairment that substantially limits a major life activity (and therefore has a disability) must be made on a case by case basis. In addition, when determining if someone meets the definition of a disability, the definition must be viewed to provide broad coverage of individuals. For more information about the definition of disability, see here (</about/offices/list/ocr/docs/dcl-504faq-201109.html>).

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Are all school districts, colleges, and universities covered by Section 504 and Title II?

Generally yes. All public school districts are covered by Section 504 and/or Title II – this includes public charter schools and magnet schools. All public colleges and

universities are covered by Section 504 and Title II. Virtually all private colleges and universities are also covered by Section 504 because they receive federal financial assistance by participating in federal student aid programs. There are some private schools that do not receive any federal assistance, and Section 504 and Title II do not apply to them.

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Are all programs in a school, college, or university covered by Section 504 if any part of it receives federal financial assistance?

Yes. All programs in a school or college are covered by Section 504 if the school district, college, or university receives federal financial assistance. Section 504 covers all the operations of a school or college that receives financial assistance including academics, extracurricular activities, athletics, and other programs. Section 504 applies to actions of a school or college regardless of where they occur, including those that take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere off campus.

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Do Section 504 and Title II protect only students?

No. Section 504 and Title II protect all persons with disabilities from discrimination, including parents and guardians, students, and employees.

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What types of Section 504 and Title II cases does OCR handle?

OCR handles cases of disability discrimination involving a range of issues, such as inaccessible facilities; unequal access to advanced academic programs (</about/offices/list/ocr/frontpage/pro-students/issues/dis-issue04.html>), extracurricular athletics (

issue04.html), and accessible technology (/about/offices/list/ocr/frontpage/pro-students/issues/dis-issue06.html); the failure to provide elementary and secondary students a free appropriate public education (FAPE) (/about/offices/list/ocr/504faq.html), discriminatory discipline, the denial to college students of appropriate academic adjustments and auxiliary aids and services (/about/offices/list/ocr/frontpage/pro-students/issues/dis-issue05.html), disability harassment (/about/offices/list/ocr/frontpage/pro-students/issues/dis-issue08.html).

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Is there someone at my school who can help answer my Section 504 questions?

Generally, yes. All school districts, colleges, and universities receiving federal financial assistance and employing 15 or more persons must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Section 504. This person is often, though not always, referred to as a *Section 504 coordinator*.

Your school is required to publish your Section 504 coordinator's contact information in your school's notice of nondiscrimination, typically found in any bulletins, announcements, publications, catalogs, application forms, or other recruitment materials. The Section 504 coordinator's contact information should also be prominently posted on your school's website. Section 504 coordinators for public school districts can also be found on OCR's coordinators website at <http://www.ed.gov/civ-rt-coordinators> (<http://www.ed.gov/civ-rt-coordinators>).

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**Frequently
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What is the responsibility of school districts, colleges, and universities under Section 504 or Title II to ensure its program and activities are physically

Disability – Accessibility and Services

accessible to individuals with disabilities?

School districts, colleges, and universities are required to ensure that students and others with disabilities, including parents, are not denied access to programs or activities because of inaccessible facilities, including academic buildings, walkways, restrooms, athletic facilities, and parking spaces.

The precise requirements schools, colleges, and universities must meet to ensure physical accessibility depends on the date a building (or facility) was initially built (constructed) or altered. For more information about accessibility requirements, please visit www.ada.gov (<http://www.ada.gov>).

Even if a building does not have to be made fully physically accessible because of its age, Section 504 and Title II require that every program or activity of the school district, college, or university be made accessible. A common way this is done is to relocate the program to an accessible portion of the building or to another building that is accessible.

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What types of services are required by Section 504 and Title II for students with disabilities in public elementary and secondary schools?

School districts are required to provide each student with a disability any special education and/or related aids and services necessary to ensure the student is receiving a free appropriate public education (FAPE). Examples of aids and services a school district may be required to provide include physical therapy or speech language therapy.

In addition, a school district may need to modify the regular education program in order to provide FAPE. Examples of such modifications include additional time to take tests or a modification to a policy regarding the permitted number of absences in a school year when a student's absences are due to a disability.

More information is available on OCR's webpage addressing Frequently Asked Questions about FAPE (</about/offices/list/ocr/504faq.html>).

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What types of disability-related services are required by Section 504 and Title II for students with disabilities in colleges and universities?

Colleges and universities are required by Section 504 and Title II to provide students with disabilities with appropriate academic adjustments and auxiliary aids and services that are necessary to afford an individual with a disability an equal opportunity to participate in the school's program. An example of an academic adjustment is extra time to take a test. Examples of auxiliary aids include notetakers, interpreters, readers, and specialized computer equipment.

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**Frequently
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Disability –
Disability
Harassment**

What is disability harassment?

Disability harassment is unwelcome conduct based on a student's actual or perceived disability. Harassers can be students, school staff, or even someone visiting the school, such as a student or employee from another school.

Disability harassment can take many forms, including slurs, taunts, stereotypes, or name-calling, as well as disability-motivated physical threats, attacks, or other hateful conduct.

In addition, at the elementary and secondary school level, bullying or harassment of a student with a disability on *any* basis can result in the denial of FAPE that must be remedied under Section 504. More information about the intersection of bullying and FAPE is available here (</about/offices/list/ocr/frontpage/pro-students/issues/dis-issue08.html>).

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What are the responsibilities of school districts, colleges, and universities under Section 504 and Title II to address disability harassment?

Section 504 and Title II require an educational institution to respond to disability-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the recipient's education programs and activities (i.e., creates a hostile environment).

When an educational institution knows or reasonably should know of possible disability harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that the harassment created a hostile environment, the educational institution must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

Note that school districts must also assess the effect of bullying and harassment on a student with a disability even if it was not disability-based harassment and even if it did not create a hostile environment. More information about the intersection of bullying and FAPE is available here (</about/offices/list/ocr/frontpage/pro-students/issues/dis-issue08.html>).

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How do educational institutions balance their Section 504 and Title II obligations with individuals' First Amendment rights?

OCR has consistently reaffirmed that the Federal civil rights laws it enforces protect students from prohibited discrimination, and are not intended to restrict expressive activities or speech protected under the U.S. Constitution's First Amendment.

The fact that discriminatory harassment involves speech, however, does not relieve the school of its obligation to respond if the speech contributes to a hostile environment. Schools can protect students from such harassment without running afoul of students' and staff First Amendment rights.

For instance, in a situation where the First Amendment prohibits a public university from restricting the right of students to express persistent and pervasive derogatory opinions about students with a particular type of disability, the university can instead meet its obligation by, among other steps, communicating a rejection of stereotypical, derogatory opinions and ensuring that competing views are heard. Similarly, educational institutions can establish a campus culture that is welcoming and respectful of the diversity all students and institute campus climate checks to assess the effectiveness of the school's efforts to ensure that it is free from harassment. Schools can also encourage students on all sides of an issue to express disagreement over ideas or beliefs in a respectful manner. Schools should be alert to take more targeted responsive action when speech crosses over into direct threats or actionable speech or conduct.

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How does OCR address disability harassment against students?

OCR investigates and resolves allegations that educational institutions that are recipients of federal funds or that are public entities have failed to protect students from harassment based on disability. Where OCR identifies concerns or violations, educational institutions often resolve them with agreements requiring educational institutions to adopt effective anti-harassment policies and procedures, train staff and students, address the incidents in question, and take other steps to restore a nondiscriminatory environment.

In addition to resolving investigations, OCR takes steps to inform schools of their obligation to provide a nondiscriminatory environment. To see relevant policy guidance relating to disability-based harassment or harassment of students with disabilities, please click here (</about/offices/list/ocr/frontpage/pro-students/issues/dis-issue08.html>).

OCR's field offices also engage in a variety of technical assistance activities in collaboration with state and local education and law enforcement agencies to encourage

educational institutions to improve their anti-harassment policies and procedures and to assist students and their parents to work with schools to enhance the schools' anti-harassment capability.

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