

## Q&A: Different Treatment Based on Disability

### What does it mean to be treated differently based on disability?

Section 504 of the Rehabilitation Act of 1973 **prohibits discrimination based on disability in any program or activity operated by recipients of federal funds.** This may include situations when people are treated differently because of their disability.

For example, schools<sup>1</sup> may not, directly or indirectly, based on disability:

- deny a qualified person with a disability **the opportunity to participate in or benefit from an aid, benefit, or service;**
- afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service **that is not equal to or as effective as that afforded others;**
- **provide different or separate aids, benefits, or services** unless necessary to provide a qualified person with a disability with aids, benefits, or services that are as effective as those provided to others;
- **aid or perpetuate discrimination** against a qualified person with a disability by providing significant assistance to an agency, organization, or person that discriminates based on disability; or
- **otherwise limit** a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

### What factors are considered in determining whether different treatment based on disability violates Section 504?

There is a four-step analysis to decide whether a student with a disability was discriminated against by being treated differently based on disability:

1. Was the individual treated differently than individuals without disabilities under similar circumstances?
2. If yes, did the different treatment result in the denial or limitation of services, benefits, or opportunities?
3. If yes, did the recipient provide a nondiscriminatory reason for its actions?
4. If yes, is there evidence that the stated reason is a **pretext** for discrimination?

#### **Examples of Aids, Benefits, and Services**

Recruitment  
Admissions  
Enrollment  
Grading  
Gifted and talented  
STEM education  
Advanced courses  
Extracurricular activities  
Co-curricular activities  
Special education  
Discipline  
Scheduling  
Employment  
Facilities  
Resources  
Financial aid

<sup>1</sup> Under Section 504 of the Rehabilitation Act of 1973, all public schools and school districts (including charter schools), state education agencies, most colleges and universities, and other entities that receive any federal funds from the U.S. Department of Education cannot discriminate based on disability.

### **What is pretext?**

Pretext is when the school may give a justification for different treatment, but that **justification is not the real reason for the different treatment.**

#### **Examples of pretext:**

- The asserted reason does not explain the recipient's different treatment.
- Witnesses contradict the recipient's stated reason for the different treatment.
- The recipient offers shifting reasons or explanations for the different treatment.
- The different treatment does not conform to the recipient's policies and procedures.
- The recipient has a history of discriminatory conduct toward individuals with disabilities.

### **What can I do if I've experienced different treatment?**

If you need help or have questions about your rights, you can contact [Disability Law Colorado](#).

If the school that you believe is treating you differently based on disability has more than 15 employees, your school is required to have a Section 504 coordinator. Your school is also required to have Section 504 grievance procedures. You can try to work with the Section 504 coordinator to resolve your concerns or you can file a complaint through your school's grievance procedures.

If you believe you have been discriminated against, you also have a right to file a complaint with the [U.S. Department of Education's Office for Civil Rights](#) (within 180 days of the alleged discrimination) or the [U.S. Department of Justice](#).

### **Where can I go for more information?**

- 34 Code of Federal Regulations (C.F.R.) Section 104.4
- OCR's [Disability Discrimination website](#)
- OCR's [Policy Guidance Portal](#)