

DISCRIMINATION UNDER SECTION 504 (§104.4(b))

Discrimination under Section 504 occurs when a recipient of federal funds:

1. Denies a disabled person the opportunity to participate in or benefit from an aid, benefit, or service which is afforded nondisabled students (e.g., district practice of refusing to allow any student on an IEP the opportunity to be on the honor roll; denial of credit to a student whose absenteeism is related to his or her disability; expelling a student for behavior related to his or her disability; refusing to dispense medication to a student who could not attend school otherwise).
2. Fails to afford the disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others (e.g., applying a policy that conditions interscholastic sports eligibility on the student's receiving passing grades in five subjects without regard to the student's disability).
3. Fails to provide aids, benefits, or services to the disabled person that are as effective as those provided to nondisabled persons (e.g., placing a student with a hearing impairment in the front row as opposed to providing her with an interpreter). [Note: "Equally effective" means equivalent as opposed to identical. Moreover, to be equally effective, an aid, benefit or service need not produce equal results; it must merely afford an equal opportunity to achieve equal results.]
4. Provide different or separate aids, benefits, or services unless such action is necessary to be as effective as the aids, benefits, or services provided to nondisabled students (e.g., segregating students in separate classes, schools, or facilities, unless necessary).
5. Aids or perpetuates discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability (e.g., sponsoring a student organization that excludes persons with disabilities).
6. Denies a person with disabilities the opportunity to participate as a member of a planning or advisory board strictly because of his or her disability.
7. Otherwise limits the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others (e.g., prohibiting a person with a physical disability from using a service dog at school).
8. In determining the site or location of a facility, makes selections which effectively exclude persons with disabilities, denies them the benefits of, or otherwise subjects them to discrimination. [