

Q&A: The Right to be Free from Retaliation

May school¹ staff engage in retaliation?

No. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination and retaliation in schools that receive federal funding from the U.S. Department of Education. **This means that recipients of federal funding *must not* take an adverse action against an individual because the recipient believes the individual engaged in or might engage in a protected activity.**

What is an adverse action?

An adverse action is an act of *intimidation, threat, coercion, or discrimination* that is *likely to dissuade a reasonable person* in the individual's position *from engaging in a protected activity*. Petty slights, minor annoyances, and lack of good manners do not typically constitute adverse actions.

Examples of possible adverse actions:

- disciplining the individual differently than similarly situated individuals;
- lowering the individual's grades, evaluations, or performance ratings;
- taking away an activity, responsibility, or privilege from the individual;
- demoting, cutting the pay of, or terminating the individual;
- banning the individual from campus or restricting communications with staff; or
- making a false report about the individual to a law enforcement agency or to child protective services.

What is a protected activity?

A protected activity can fall under one of two types according to Section 504:

- (1) Filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing related to potential disability-based discrimination; or
- (2) Taking actions in furtherance of a substantive or procedural right guaranteed by the statutes and regulations that prohibit discrimination based on disability.²

When is my activity a protected one?

In order to be a protected activity, the manner of the individual's protected activity must be *reasonable*, and the individual must have had a *good faith and objectively reasonable belief*, at the time that the individual engaged in the activity, *that the individual was engaging in a protected activity*.

¹ In this document, "school" is a term used to describe recipients of federal funding from the U.S. Department of Education. This includes entities such as public schools, charter schools, colleges, and universities.

² This document is limited to disability-based discrimination, but there are also protections against discrimination based on race, national origin, color, sex, and age.

Examples of protected activities:

- filing or threatening to file a grievance with a school;
- filing or threatening to file a complaint with the Colorado Department of Education (CDE) regarding a violation of disability-related rights, such as failing to implement a student's IEP or Section 504 plan;
- filing or threatening to file a complaint regarding a violation of disability-related rights or disability-based discrimination with the U.S. Department of Education's Office for Civil Rights (OCR) or the Department of Justice (DOJ);
- participating as a witness in an investigation conducted by CDE, OCR, or DOJ;
- requesting an evaluation or reevaluation to determine eligibility for an IEP or Section 504 plan;
- requesting more or different services, or a change in placement, for a student with a disability; and
- reporting that a student has been subject to harassment or bullying based on disability.

Once an individual has been subject to an adverse action after engaging in a protected activity, there are three additional factors to consider in determining if it was retaliation:

- there must have been a causal connection between the protected activity and the adverse action;
- the school cannot articulate a facially legitimate, non-retaliatory reason for the adverse action; and
- any stated reason provided by the school was pretext for retaliation.

What can I do if I've been retaliated against?

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

If you believe you have been retaliated against, you 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?

- [OCR's Dear Colleague Letter regarding retaliation](#)
- [OCR's Case Processing Manual](#)