



# Disability Discrimination in Public and Private Schools

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## I. Federal and State Disability Discrimination Laws

Students and school applicants with disabilities are protected against disability-based discrimination, and have a right to reasonable accommodations, under federal and state law.

This fact sheet only applies to K-12 schools. For questions about discrimination in higher education, visit DRC's higher education [fact sheet](#).

- [Information on Discipline of Students with Disabilities](#)
- [Information on Rights of Students with Significant Health Conditions](#)
- [Bullying and Harassment of Students with Disabilities](#)
- [Retaliation by the School](#)

There are two categories of law that protect your child against disability discrimination: discrimination laws and special education laws. Special education laws such as the Individuals with Disabilities Education Act (IDEA) protect public school students and ensure their right to a Free Appropriate Public Education (FAPE). For more information on IDEA and FAPE see [Chapter 3](#) of the SERR manual.

Discrimination can take many forms, such as excluding students with disabilities, giving them unequal treatment, harassment, retaliation or failing to provide

reasonable accommodations. The ban on discrimination applies to all school programs- both academic and nonacademic.

Below are the different federal and state laws that protect students from discrimination:

**1. The Americans with Disabilities Act (ADA)**

The ADA prohibits disability-based discrimination. Title II of the ADA applies to government entities and includes public schools. More information about Title II can be found [here](#). Title III of the ADA prohibits discrimination by businesses, or “public accommodations,” including private schools. The ADA does not cover religious schools. More information about Title III can be found [here](#).

**2. Section 504 of the Rehabilitation Act (Section 504)**

Section 504 prohibits disability based discrimination by any school that receives federal funding. Most public schools are covered by Section 504 because they receive federal funding. Private schools that receive any financial assistance from the federal government are also covered under this law. This includes religious schools that are exempt under the ADA.

**3. Unruh Civil Rights Act (Unruh)**

The Unruh Act is a California state law that prohibits disability-based discrimination by business establishments, including private schools. Whether a religious school is covered under the Unruh Act depends on the extent to which it teaches religious doctrine or limits enrollment to students of a particular religion.

**4. California Government Code Section 11135 (Section 11135)**

Section 11135 is similar to Section 504, but it prohibits discrimination by any program that receives state funding. This usually always applies to public schools. If a private religious school receives any funding from the state government they are subject to this law even if it is exempt under the Unruh Act.

**5. California Education Code Section 220 (Section 220)**

Section 220 is similar to Section 11135 and prohibits discrimination in any school-based program or activity receiving state funding. This law explicitly includes schools with students who receive state financial aid.

## **II. Reasonable Accommodations**

Students and applicants with disabilities can request a reasonable accommodation from a covered school at any time. The request can take any form, but it is best to make the request in writing if possible. The request should include details about your child's disability, a letter from a treating professional explaining the disability-related need for your child's accommodation, and suggestions on specific accommodations that you think would work for your child. Sample letters to request and support a reasonable accommodation are included at the end of this fact sheet.

Schools receiving federal funding must have a Section 504 Coordinator. Requests for accommodations can be submitted to this coordinator. The 504 Coordinator should then schedule a meeting with you and your child's teacher within 30 days to discuss a potential 504 Plan. If you are at a private school that does not receive federal funding, but is covered by another law, you can submit your request to the principal.

Schools are required to make reasonable accommodations unless it would impose an undue burden or a fundamental alteration of the school's program. An undue burden is a significant difficulty or expense, considering the school's overall budget.

The goal of an accommodation is to provide your child with an equal opportunity to access the same benefits other children at the school enjoy. Your child must have the opportunity to be as successful as other children, but it is not required that they have an identical level of performance. This opportunity must be provided in the most integrated setting appropriate to the child's needs.

## **III. Advocating for Your Child**

If your child's school refuses to provide them with accommodations or otherwise discriminates against your child because of their disability, you have the option of filing an internal grievance, a state or federal administrative complaint, or a lawsuit.

### **1. Internal Grievances**

Under Section 504, a school receiving federal funding must have procedures in place for students who believe their rights have been violated. These procedures must include due process standards and provide for prompt resolution of complaints. If you want to file an internal

grievance with your school, ask your school's Section 504 coordinator for more information. Keep in mind that if your complaint concerns discrimination, it must be filed within six months from the date the discrimination occurred, or from the date you first knew about the discrimination. This six-month period may be extended by the district superintendent, if you ask for an extension in writing.

## **2. Federal Administrative Complaints**

### Office of Civil Rights (OCR):

The U.S. Department of Education's Office of Civil Rights (OCR) investigates violations of schools that receive federal financial assistance. Complaints with the OCR must be filed within 180 days of the discrimination unless you have already gone through your school's internal grievance process. If you have completed your school's internal grievance process, you must file your complaint with the OCR within 60 days of your school's decision. You can find information about filing a complaint with the OCR at <https://www2.ed.gov/about/offices/list/ocr/index.html>.

### Department of Justice (DOJ):

The U.S. Department of Justice (DOJ) investigates violations of the ADA. Title II complaints (for public schools), must be filed within 180 days of the discrimination. Title III complaints (for private schools), can be filed at any time. It is best to file as soon as possible though, because time can make it difficult to prove. More information about filing a complaint with DOJ can be found here: [https://www.ada.gov/filing\\_complaint.htm](https://www.ada.gov/filing_complaint.htm)

## **3. California Administrative Complaints**

### Department of Fair Employment and Housing (DFEH):

California Government Code Section 11135 and the Unruh Civil Rights Act are enforced by the California Department of Fair Employment and Housing (FEHA). You can file an administrative complaint with DFEH online at: <https://www.dfeh.ca.gov/complaint-process/file-a-complaint/> You must file a complaint within one year of the discrimination.

### California Department of Education (CDE):

The California Department of Education (CDE) investigates allegations of noncompliance with laws in public schools. The Department must directly intervene when (1) there is immediate physical danger, (2) a student's "health, safety, or welfare" is threatened, (3) a school has failed to comply with due process laws, (4) a student is not receiving their IEP services, or (5) the school has violated the Individuals with Disabilities Education Act (IDEA).

The complaint must be filed within one year of the alleged violation. You can find information about filing a complaint with the California Department of Education at <https://www.cde.ca.gov/sp/se/qa/cmplntproc.asp>.

#### **4. Litigation**

Violations of the laws discussed above may also be enforced through private lawsuits. Statutes of limitations may restrict the timeframe for filing a lawsuit, and you could lose claims if you do not act within that timeframe. These deadlines can be as short as two years from the date of discrimination. If you are interested in pursuing litigation, you should consult with an attorney as soon as possible.

If you are seeking less than \$10,000 in money damages, another option is to file a discrimination case in Small Claims Court. The statutes of limitations will still apply. You cannot use a lawyer if you go to small claims court. Find more information about this here:

<http://www.disabilityrightsca.org/pubs/520601.pdf>.

If you think your child was hurt and you want to file a personal injury lawsuit, you may need to file a tort claim first. A tort claim is something that you file if the person who hurt you was a government employee. You usually have to file a tort claim within six months of the day you were harmed. Find more information [here](#).

If you need assistance finding a lawyer outside of Disability Rights California to pursue your case, you can call the California State Bar Lawyer Referral Service at 1-866-442-2529 or visit them online at

<http://www.calbar.ca.gov/Public/Need-Legal-Help/Lawyer-Referral-Service>.

### **Sample Letter to Request a Reasonable Accommodation**

[Date]

Dear [School or name of 504 Coordinator, if known]:

I am writing to request reasonable accommodations for my son/daughter, [child's name] because of his/her disability/disabilities.

My child is [a student at/applying to become a student at] [name of school]. Because of his/her disability, he/she needs the following accommodations: [list accommodations].

My child's [physician/psychiatrist/psychologist/therapist/social worker/occupational therapist /other individual (describe)] has deemed these accommodations/modifications necessary in light of his/her disability. Please see the attached letter from [doctor or professional's name].

Federal and state law require that K-12 schools reasonably accommodate students and applicants who have disabilities. Please respond to this request by [date]. Feel free to contact me at [your phone number and/or e-mail address] if you have any questions. Thank you.

Sincerely,

[Your name]

[Your address]

## Sample Support Letter

[Date]

Dear [School or name of 504 Coordinator, if known]:

I am the [physician/psychiatrist/psychologist/therapist/social worker/occupational therapist] for [Name], and am familiar with his/her condition. [S/he] has a disability that causes certain functional limitations. These limitations include [list functional limitations that require the requested accommodation].

[The requested accommodation] is necessary for [Name] to [apply for/have equal access to the services and benefits of] [name of school]. [Describe how the accommodation will assist or support the individual]. Thank you for providing this reasonable accommodation for [Name].

Sincerely,

[Name and Title]