

The ADA, Section 504 & Postsecondary Education

Many parents of students with disabilities have learned the basics of the Individuals with Disabilities Education Act (IDEA). However, as students and their families prepare for the transition from secondary programs to postsecondary options they often find they are less familiar with the protections provided by the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.

It is important that students and their advocates become knowledgeable about their rights and responsibilities in postsecondary education. Although protections exist, the students have considerably more responsibility in postsecondary education to request their own accommodations. This responsibility is ongoing. For many students with disabilities, good self-advocacy skills are the key to success, and knowing their rights is one essential element of effective self-advocacy. The following questions reflect the most commonly asked of PACER staff about the ADA and postsecondary programs (**two- and four-year colleges, universities, and specialized career and technical education programs**).

Q. How does the ADA affect postsecondary programs?

A. Title II of the ADA covers state-funded programs such as universities, community colleges, and career and technical education programs. Title III of the ADA covers private colleges, and vocational programs. If a postsecondary education program receives federal funding, regardless of whether it is a private or public program, it is also covered by the regulations of Section 504 of the Rehabilitation Act which requires the school to make programs accessible to qualified students with disabilities.

Q. What are the differences between the ADA and Section 504?

A. For most postsecondary programs, there are not many practical differences. Although Section 504 only applies to programs that receive federal financial assistance, the reality is that most postsecondary programs do receive federal funding. In addition, the ADA Title II requirements affecting publicly funded postsecondary programs were modeled on Section 504. Only private postsecondary institutions that do not receive government funds are not covered by the broader 504 or ADA Title II requirements. Under Title III of the ADA, programs have a lower burden. In other words, assuming their resources are fewer, they wouldn't have to provide the same level of modification as programs accepting federal funds. Private postsecondary institutions are still required to provide accommodations to students with disabilities under either law.

Q. How do the ADA and Section 504 affect admissions requirements?

A. A postsecondary program cannot have eligibility requirements that omit people with physical or mental disabilities. Application forms cannot ask applicants if they have a history of mental illness or any other disability. Institutions may impose criteria that relate to safety risks but these criteria must be based on actual risks and not on stereotypes or assumptions. It is also illegal for an institution to serve students with disabilities differently because it believes its insurance costs will increase. (It is illegal for insurance companies to refuse to insure, continue to insure, or limit the amount of insurance solely because individuals with disabilities are to be included in a program unless the practice is based on sound actuarial principles or actual experience.)

Q. What must postsecondary programs provide for students with disabilities?

A. A postsecondary program may not discriminate on the basis of disability. It must ensure that the programs it offers, including extracurricular activities, are accessible to students with disabilities. Postsecondary programs can do this in a number of ways: by providing architectural access, providing aids and services necessary for effective communication and accommodations, and by modifying policies, practices, and procedures.

Q. What are the architectural accessibility requirements that affect postsecondary educational programs?

A. Buildings constructed or altered after June 3, 1977, must comply with the relevant accessibility code required by Section 504. Those built after January 26, 1992, must comply with ADA regulations. Buildings constructed before the 1977 date need not be made accessible if the college or program can ensure that its students with disabilities enjoy the full range of its programs through other means such as relocating classes to an accessible building. All programs and services, however, must be provided in an integrated setting. In some instances, architectural access may be the only way to make a program accessible.

Q. Does the college that accepted a student into its program have to provide him or her with an accessible dorm room?

A. Yes, if that is what is provided to students without disabilities. A postsecondary program that provides housing to its students must provide comparable accessible housing to students with disabilities at the same cost as to others. Accessible housing should be available in sufficient quantity and variety so that the housing options available to students with disabilities are equivalent to those without disabilities.

Q. What kinds of aids and services must postsecondary institutions provide to ensure effective communication?

A. Qualified interpreters, assistive listening systems, captioning, TTYs, qualified readers, audio recordings, taped texts, Braille materials, large print materials, ensuring that online materials are available in an accessible electronic format, and adapted computers are examples of auxiliary aids and services that provide effective communication. Such services must be provided unless doing so would result in a fundamental alteration of the program, or would result in undue financial or administrative burdens. Postsecondary programs that receive federal funds must give primary consideration to the individual's preferred form of

communication unless it can be demonstrated that another equally effective means of communication exists.

Q. How would postsecondary programs modify their policies, practices, or procedures to make programs accessible?

A. The most challenging aspect of modifying classroom policies or practices for students with disabilities is that it requires thought and some prior preparation. The difficulty lies in trying to anticipate needs and be prepared in advance. The actual modifications are rarely substantive or expensive. Some examples are:

- Rescheduling classes to an accessible location
- Using early enrollment options for students with disabilities to allow time to arrange accommodations
- Substituting specific courses required for completion of degree requirements
- Allowing service animals in the classroom
- Providing students with disabilities with a syllabus prior to the beginning of class; clearly communicating course requirements, assignments, due dates, grading criteria both orally and in written form
- Providing written outlines or summaries of class lectures, or integrating this information into comments at the beginning and end of class
- Allowing students to use note takers or record lectures
- Allowing students with disabilities, whose disability prevents them from taking a full-time course load, to qualify for financial aid.

Modifications will vary, based on the individual student's needs. Modifications of policies and practices are not required when they would fundamentally alter the nature of the service, program, or activity.

Q. Can a postsecondary program charge students for the cost of providing an accommodation?

A. No. However, they may offer more individualized or intensive services not required by law, such as tutoring for a fee.

Q. Do students have to provide documentation of their disability to request accommodations?

A. Postsecondary programs may request documentation of a disability. If a person obviously uses a wheelchair or is blind or deaf, no further documentation may be necessary. For those with hidden disabilities, such as learning disabilities, mental disorders or chronic health conditions, it is reasonable and appropriate for a program to request current documentation

to establish the validity of the request for accommodations and to identify the accommodations needed.

Q. What kind of documentation might be necessary?

A. Documentation should be completed and signed by a professional familiar with the applicant and the applicant's disability such as a physician, psychologist, special education evaluator, or rehabilitation counselor. It should verify the disability and suggest appropriate accommodations.

If previous documentation exists, it will likely be sufficient if it is current (usually less than three years old). If no current documentation is available, it is the responsibility of the student to have new documentation prepared. This can sometimes mean paying to have a new evaluation done.

Schools are required by IDEA (2004) to create a Summary of Performance (SOP) for each student receiving special education services when a youth graduates from high school, or exits a special education transition program for 18- to 21-year-olds. While the format of the SOP is up to the local district or school, there are three areas that must be covered: academic achievement, functional performance, and recommendations on how to assist the student in meeting his or her postsecondary goals. Including information in the SOP on academic accommodations that have been effective in the past will be helpful to postsecondary programs in determining what accommodations or modifications are needed.

Because the ADA's definition of disability differs from that in IDEA, a student who has had special education services in high school will not necessarily be eligible for accommodations in a postsecondary program. Each student's eligibility to receive accommodations is determined by the postsecondary program on a case-by-case basis based on the ADA's definition of disability — a physical or mental impairment that substantially limits one or more major life activities.

Q. If a student is planning to attend a college that provides transportation to classes on the campuses of other local colleges, do they have to provide wheelchair accessible transportation?

A. Yes. Under the ADA, the college is obligated to provide equivalent transportation for its students with disabilities.

Q. Are students with disabilities required to disclose their disability?

A. If students do not require any accommodations, they can choose to keep information about their disability private. If they need accommodations because of their disability, however, students must disclose in order to receive these. A postsecondary program cannot provide any service, modification, or accommodation when it does not know one is required. It is a student's responsibility to make their needs known in advance. This process is often facilitated by an Office for Students with Disabilities. It is then the program's responsibility to work with the student to make reasonable modifications or provide appropriate services in a timely way.

Q. Are postsecondary programs required to make testing accommodations for students with disabilities?

A. Yes. Postsecondary programs must establish a process for making their tests accessible to people with disabilities. They can do this by providing appropriate accommodations to students with disabilities. Remember, each student's needs are individual. Examples of accommodations include: allowing a student extended time to complete a test or providing a distraction-free space, sign language interpreters, readers, or alternative test formats. Testing accommodations are also required of agencies which administer college entrance exams, and the agencies, organizations, or businesses that administer licensure and certification.