



ADA Q&A: SECTION 504 AND 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 school 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 crucial that students and their advocates become knowledgeable about their rights and responsibilities in postsecondary education because, although protections exist, the student has considerably more responsibility to request and design their own accommodations. And this responsibility is ongoing. For many students with disabilities, good self-advocacy skills will be key to success, and knowing your rights is one essential element of effective self-advocacy.

The following questions reflect those commonly asked of Utah Parent Center staff regarding the ADA and postsecondary institutions.

Q. How does the ADA affect postsecondary schools?

A. Title II of the ADA covers state funded schools such as universities, community colleges and vocational schools. Title III of the ADA covers private colleges and vocational schools. If a school receives federal dollars regardless of whether it is private or public it is also covered by the regulations of Section 504 of the Rehabilitation Act requiring schools to make their programs accessible to qualified students with disabilities.

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

A. For most postsecondary schools, there are not many practical differences. Although Section 504 only applies to schools that receive federal financial assistance, the reality is that most postsecondary schools do receive federal dollars. In addition, the ADA Title II requirements affecting state funded schools 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 these schools have a lower standard of burden in other words, assuming their resources are less, they wouldn't have to do as much as government-funded schools. But they are still required to accommodate students with disabilities in similar ways.

If you child has disabilities or special needs, so do you!

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

- A. The postsecondary program cannot have eligibility requirements that screen out 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 risk 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 be increased. (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 do postsecondary programs generally have to do for students with disabilities?

- A. A school may not discriminate on the basis of disability. It must insure that the programs it offers, including extracurricular activities, are accessible to students with disabilities. Postsecondary schools can do this in a number of ways: by providing architectural access, providing aids and services necessary for effective communication, 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 and, after Jan. 26, 1992, the ADA. Buildings constructed before the 1977 date need not be made accessible if the college or school 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 me into its program have to provide me with an accessible dorm room?

- A. Yes, if that is what they provide to students without disabilities. A school that provides housing to its students must provide comparable accessible housing to students with disabilities at the same cost as to others. This 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 insure effective communication?

- A. Qualified interpreters, assistive listening systems, captioning, TTYs, qualified readers, audio recordings, taped texts, Braille materials, large print materials, materials on computer disk, and adapted computer terminals 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. [Note: According to a 1992 publication on the ADA and postsecondary education by the Association on Higher Education and Disability (AHEAD), the Department of Education has never accepted an argument for undue financial burden under Section 504.] Public entities must give primary consideration to the individual with a disability'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 the need to anticipate needs and be prepared in advance. The actual modifications themselves are rarely substantive or expensive. Some examples are rescheduling classes to an accessible location; early enrollment options for students with disabilities to allow time to arrange accommodations; substitution of 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; and allowing students to use notetakers or tape record lectures. Modifications will always vary based on the individual student's needs. Modifications of policies and practices are not required when it would fundamentally alter the nature of the service, program, or activity.

Q. I am planning to attend a college that provides transportation to classes on the campuses of other colleges in a local consortium. Do they have to provide me with wheelchair accessible transportation?

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

Q. Can a school charge me for the cost of providing an accommodation?

A. No.

Q. Do I have to provide documentation of my disability to request accommodations?

A. Schools may request current 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, however, such as learning disabilities, psychiatric disabilities or a chronic health impairment, it is reasonable and appropriate for a school to request documentation to establish the validity of the request for accommodations, and to help identify what accommodations are required.

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 or rehabilitation counselor. It should verify the disability and suggest appropriate accommodations. If previous documentation exists, it will likely be sufficient unless it is not current (usually no more than three years old). If no current documentation is available, it is the responsibility of the student to have new documentation prepared. This can mean paying to have an appropriate professional conduct a new evaluation. It would be prudent to get an evaluation the year before you leave high school. This information is confidential and not a part of the student's permanent record.

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

- A. If you do not require any accommodations, you can choose to keep this information private. If you do need accommodations because of your disability, however, you must disclose in order to receive them. A school 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 school's responsibility to work with the student to make reasonable modifications or provide appropriate services in a timely way.

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

- A. Yes. Schools must establish a process for making their tests accessible to people with disabilities. Schools can do this by providing appropriate accommodations to students with disabilities. Remember, each student's needs are individual, but 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. [Note: Testing accommodations are also required of agencies which administer college entrance exams, the agencies or businesses that administer licensure and certification tests that establish one's professional credentials such as bar exams, etc., and the businesses that offer classes to help individuals prepare to take these exams.]

Q. What is the purpose of testing accommodations?

- A. The purpose of providing testing accommodations is to enable individuals with disabilities to demonstrate their mastery of the subject matter being tested not to provide lesser academic or professional standards for people with disabilities. Accommodations may affect how a test is taken, but not what it measures.

Q. What should I do if my instructor refuses or neglects to make the accommodations I requested?

- A. Sometimes individual instructors are not familiar with the requirements of ADA or Section 504, or the purpose of accommodating students with disabilities. It is not unusual to encounter instructors who feel classroom or testing accommodations give students with disabilities an unfair advantage over other students. It is a school's responsibility, however, to educate their

faculty about the purpose of accommodations and their legal obligations, and to assist them with the logistics of providing accommodations. Many postsecondary schools have an Office of Services for Students with Disabilities that serves as a liaison between students and faculty, and can advocate for reasonable accommodations. If your school does not have such an office, government-funded programs are required by law to have an ADA/504 Coordinator. You can contact this person at your school to get help to resolve the situation or file an internal complaint if necessary.

Q. What if informal attempts to resolve the problem are unsuccessful?

- A.** If your situation cannot be resolved informally, you can follow an institution's internal grievance procedure. All government-funded educational institutions are required to have an internal grievance procedure. You also have the right to file an ADA or 504 complaint with the Office of Civil Rights (OCR) of the U.S. Department of Education. You have only 180 days after the date of a discriminatory action to file a complaint. Such complaints can take considerable time for the OCR to investigate. You may opt to file a private lawsuit in federal court. If you are successful in your suit, the ADA provides for "injunctive relief" (this means providing the access that was denied or not provided) and attorney's fees. Damages are generally not available unless it can be established that the discrimination was intentional.

Q. How do the ADA and Section 504 affect my options for postsecondary education?

- A.** Because these laws require both private and government-funded postsecondary programs to make their programs accessible, they should widen the number of options that are available to students with disabilities. If you are interested in a specialized field of study that is not widely offered, it is empowering to know that as long as you meet a program's requirements, you cannot be discriminated against on the basis of disability. You cannot be excluded from a program because an institution does not have experience in accommodating students with disabilities.

On the other hand, from a practical perspective, students with disabilities would be well advised to consider this very factor. All postsecondary programs may be affected by the ADA, but not all have integrated its provisions or adopted a welcoming attitude. Students should not need to spend excessive time practicing their self-advocacy skills at the expense of acquiring an academic education. Consider what accommodations you require, your comfort level as a self-advocate, and the services and supports currently in place at the academic or vocational institution you are considering in addition to the reputation of the program and the convenience of the school's geographic location.

Does the school have an office serving students with disabilities? Have they appointed an ADA/504 Coordinator? Do they have a grievance policy established? Have they published a notice of nondiscrimination? Have faculty received any disability awareness training? How does one request accommodations? Can you enroll in classes early to allow you a chance to locate your classroom, identify barriers and discuss accommodations with your instructors?

Q. Does the ADA provide funding for students with disabilities?

- A.** No. The ADA is a civil rights law and does not provide any direct services or funding to students with disabilities. Students with disabilities are eligible for the same scholarships and loans as other students. However, some students with disabilities who do not qualify for specific financial aid programs because their disability prevents them from taking the full course-load required, can be accommodated by adapting the full-time or part-time course-load requirements to a level appropriate to the individual's capacity. Students with disabilities may also be eligible for funding from other special programs.

If you qualify for vocational rehabilitation services through your state vocational rehabilitation program, you may be eligible to receive tuition support as part of your plan of services. To find out more, contact the Utah Parent Center at 801-272-1051 or 800-468-1160, Utah Division of Services for the Blind and Visually Impaired at 801-323-4343, or the Division of Rehabilitation Services 801-538-7530.

For more financial aid information, contact the HEATH Resource Center (address below).

Q. Where can I get more information on this subject?

- A.** Other organizations which publish helpful information on postsecondary education for students with disabilities are:

HEATH Resource Center

The George Washington University

2121 K Street, NW Suite 220

Washington, DC 20037

Voice/TTY: 202-973-0904 or Toll Free 1-800-544-3284

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