

ADA Q&A...The ADA, Section 504 & Postsecondary Education

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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 most commonly asked of PACER 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.

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.]