

**WHAT ARE THE LAWS WHICH GOVERN THE PROVISION OF
SUPPORT SERVICES FOR STUDENTS WITH DISABILITIES IN
POSTSECONDARY ENVIRONMENTS?**

**SECTION 504 OF THE VOCATIONAL REHABILITATION
ACT OF 1973**

No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation, be denied the benefits of; or be subjected to discrimination under any program or activity receiving federal financial assistance.

AMERICANS WITH DISABILITIES ACT OF 1990

(ADA)

It is the purpose of this Act -

1. to provide clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
2. to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
3. to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and
4. to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

QUALIFIED INDIVIDUAL WITH A DISABILITY

The term 'qualified individual with a disability' means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

DISCRIMINATION

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

WHAT DOES THIS MEAN FOR A STUDENT WITH A DISABILITY ENTERING COLLEGE?

The ADA and Section 504 combined imply that whether an institution is a private or public entity the institution has a responsibility to prohibit discrimination against students with disabilities. Colleges and universities are required to make modifications in policies as well as physical environments that allow all students the opportunity to participate equally. To not comply with these laws is akin to discriminating against an individual because of skin color or religion.

HOW DOES A STUDENT WITH A DISABILITY GAIN ACCESS TO MODIFICATIONS?

Unlike the laws that apply in secondary and elementary environments, the ADA and Section 504 require students to self-identify to the institution and provide appropriate documentation that substantiates the need for adjustments or accommodations. All institutions are required to publish the procedure students are to use to access accommodations. Generally, the procedures can be found in the catalog, schedule and other publications from the institution.

All institutions are also required to hold confidential any documentation of a disability that a student supplies. As such, each institution usually has a separate office or program that students with disabilities can use to request accommodations. It is also illegal for an institution to request information about a person's disability on an application form — unless that institution is under mandate to correct past behaviors. Regardless the existence or non-existence of a disability can not be a consideration in the application process. However, some institutions do have special entrance programs for students with disabilities and it is appropriate to consider disabilities and ask for disclosure of a disability in these situations.

HOW DOES THIS IMPACT A STUDENT WITH A DISABILITY ON A DAILY BASIS?

There are general requirements that must be met under these laws. They are:

- No exclusion solely on the basis of disability. It is illegal to place caps on the admission of students with disabilities to institutions or to programs/activities that are open to the general population of (potential) students.
- No discrimination through contract. Neither public nor private entities may not elude their responsibilities for compliance with the ADA or Section 504 by contracting out portions of their programs/services to another entity. These programs are under the same requirements for accessibility as if the institution ran the program/activity themselves.
- Participation in the most integrated setting. If special programs are established, the individual with a disability may still choose to participate in the general program. Persons with disabilities have the right to refuse accommodation.

- No discrimination through eligibility criteria unless that criteria can be shown to be necessary to the provision of the activities or services. The institution may impose criteria that relate to safety risks but these criteria must be shown to be based on actual risk and not on stereotypes or assumptions about the abilities of people with disabilities.
- Modifications in policies, practices, and procedures when necessary to avoid discrimination on the basis of disability unless the institution can demonstrate that modifying the policy or practice would fundamentally alter the nature of the activities or services offered. Students with disabilities can be asked to actively participate in the arrangement and day to day maintenance of accommodations. This could require a student with a disability to work directly with instructors or other personnel to arrange, manage, or otherwise maintain the accommodation.
- Modifications to allow the presence/use of appropriately trained and licensed service animals.
- No discrimination through association. It would be discriminatory to deny space on campus for a student initiated LD support group or to require all students who attend such a group to apply for services through the Disabilities Services Office.
- Surcharges to cover the costs of accessibility may not be imposed solely on persons with disabilities. The cost of accommodation is part of the daily operation of the institution. If the cost were put in a surcharge that all students pay (such as a student fee) this would be appropriate. Students with disabilities can be charged a fee for programs that go above and beyond the required accommodations.
- Examinations and courses must be accessible. This is not only true for examinations required to participate in the programs but also for examinations related to licensing or certification for educational, professional, or trade purposes. Public entities are required to provide accommodation in examinations they administer and to see that testing given by others for use in their licensing/certification procedures is given with appropriate accommodation.
- No discrimination because of insurance constraints. It is illegal for a public or private entity to refuse to serve persons with disabilities, or to serve them differently due to their disabilities, because it's insurance company conditions coverage or rates on the absence of individuals with disabilities.
- No harassment or retaliation. It is a violation of the ADA to discriminate through action or treatment against an individual who has opposed any act or practice made unlawful by the ADA, or because such individual testifies, assisted, or participated in any manner in the bringing of a complaint under the ADA.¹

¹ This last section was adapted from: Title by Title, The ADA's Impact on Postsecondary Education by Jane E Jarro, Ph.D.; 1992 Association on Higher Education and Disability