

Nondiscrimination in Higher Education

What's the Law?

When Congress passed the Rehabilitation Act of 1973, it included Section 504 which forbade discrimination against persons with disabilities by programs and activities receiving federal financial assistance, which included virtually every institution of higher education, except the U.S. military academies and a few small religious schools. This was the first civil rights statute designed to prevent discrimination against persons with disabilities and was patterned after the Civil Rights Act of 1964. The Americans with Disabilities Act of 1990 (ADA) was patterned after Section 504. It, too, requires that students with disabilities may not be excluded from participation in, or be denied the benefits of, or be subjected to discrimination by any institution which is subject to the ADA. The ADA does not require that the institution receive federal financial assistance.

Who is protected?

Any individual who has a physical or mental impairment which substantially limits a major life activity; has a record of having such an impairment; or is regarded as having such an impairment is protected by the law, as discrimination has many faces. Most faculty, however, will find themselves dealing with students who meet the first prong of the definition — an impairment which presents a substantial limitation to a major life activity.

How does this affect my college or university?

A postsecondary institution must make reasonable accommodations in order to provide students with disabilities an equal opportunity to participate in the institution's courses, programs and activities. This includes extracurricular activities. Colleges must make "academic adjustments" to ensure that a student has an equal opportunity to participate. Academic adjustments may include extended time for test taking, completion of course work or graduation; tape recording of classes; substitution of specific courses to meet degree requirements; modification of test taking or performance evaluations so as not to discriminate against a person's sensory, speaking or motor impairments, unless that is what is being tested.

A college or university must also provide "auxiliary aids and services," such as qualified sign language interpreters, notetakers, readers, braille and large print materials, and adaptive equipment. A *qualified interpreter* is one who can

communicate expressively and receptively, using any specialized vocabulary in a manner that is effective, accurate, and impartial. Institutions are not responsible for providing personal services such as attendants, hearing aids, glasses, etc. Under the applicable regulations, tutoring is a personal service. Therefore, it need not be provided unless the school provides tutoring to other students, in which case it must make that tutoring program accessible to students with disabilities. Institutions may not charge money for reasonable accommodations.

Colleges do not have to provide accommodations that would "fundamentally alter" the educational program or academic requirements which are essential to a program of study or to fulfill licensing requirements. The determination of what is a fundamental alteration, however, is one which requires specific steps and a reasoned, determinative process on the part of the campus community. Remember, the ADA is a remedial statute which requires that colleges and universities question their notions of what is truly fundamental and provide for alternate methods of achieving the results intended by the educational program.

What is my Role as a Faculty Member?

As a faculty member, you are an integral part of your institution's efforts to comply with these laws. Just as you are not free to discriminate against students on the basis of race, religion, gender or ethnicity, so too, you cannot discriminate against students with disabilities. Part of not discriminating against students with disabilities is the provision of reasonable accommodations or "academic adjustments" and "auxiliary aids and services". Institutional compliance is a shared responsibility of which faculty are a necessary part. Your employment in that capacity requires that you assist the institution in fulfilling its compliance responsibilities in connection with the ADA as well as other civil rights statutes.

Suggested Dos and Don'ts

Do:

- Ask questions if you don't understand something or are not sure how to proceed — your Disability Services office can be very helpful in this regard.
- Hold up your end with regard to accommodations which have been determined to be appropriate. This may

include asking class members to volunteer to take notes or providing copies of exams to the disability services office in order for a student to take the examination under alternate circumstances, such as extended time, using a scribe or braille, etc.

- Treat students with disabilities with the same courtesies you would afford to other students.
- Respect the privacy of students with disabilities. They need not disclose their disability to fellow students. While they must disclose disability to a designated official at your college in order to access accommodations, this does not require disclosure to everyone. Treat disability information which has been disclosed to you as confidential.
- Raise appropriate questions. Questions may lead to your college's addressing certain types of requests more consistently and more thoroughly in the future.
- Assist students in following the university's policies, such as possible requirements that all requests for accommodation be lodged with the Disability Services office and not individual faculty members alone. This protects students, faculty, and the institution by ensuring consistency and takes much of the burden off individual faculty members, who are often ill-equipped to determine whether an accommodation is appropriate or how to provide it. Violations have been found in cases where faculty members have not followed institutional policies.

Don't:

- Engage in philosophical debates about "fairness" to other, nondisabled students, or whether providing accommodations somehow violates your academic freedom. These arguments are unavailing for several reasons. First, philosophical debates about whether and how equal educational opportunities are provided to students with disabilities are legally meaningless. Congress has determined how we as a society should

address equal access to education by passing federal civil rights statutes protecting the rights of persons with disabilities, without adversely impacting those without disabilities. Congress has been joined in this effort by most state legislatures as well. Second, academic freedom is not preemptive of federal civil rights statutes.

- Decide not to provide the academic adjustments which have been approved by the institution's designee. You may subject your institution or yourself to liability.
- Leave a student adrift without accommodations. If no volunteers are willing to take notes in a class, make sure the student knows who to see to rectify this in another manner.
- Refuse to permit students to tape record lectures as an accommodation. General policies which permit instructors to refuse the use of tape recorders, without providing for their use by students with disabilities, are legally insufficient.
- Refuse to provide copies of handouts, or orally describe information written on the chalkboard, or face the class when referring to something written on the chalkboard, etc., if these accommodations have been determined to be appropriate for a student.
- Refuse to provide extended time for tests on the mistaken assumption that doing so would require that all students be given additional time.
- Refuse to provide accommodations until you have personally evaluated a student's documentation of disability. Eligibility for services under the ADA is the job of the disability services personnel, not the faculty.
- Make assumptions about a student's ability to work in a particular field. Most often, concerns that students may not be able to "cut it" are based on fears and assumptions, not facts. Remember too, that employers are also required to comply with the ADA.

For more information, contact:

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