



## Educational Accommodations

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### Background

The Fourteenth Amendment to the Constitution provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without

[DUE PROCESS OF LAW](#); not deny any person withinits

[JURISDICTION](#) the [EQUAL PROTECTION](#) of the laws." These rights have been extended to many groups throughout the history of the United States, and the Americans with Disabilities Act spells out how those living with disabilities may not be barred from any educational situation.

The [DISABILITY](#) rights movement used similar tactics and strategies to fight to extend the "equal protection of the laws" to those with physical or mental handicaps following the passage of the **CIVIL RIGHTS**

Act of 1964. The first success the disability rights movement had was with Section 504 of the Rehabilitation Act of 1973. Based on the models of previous laws with prohibited discrimination based on race or gender, Section 504 prohibits [DISCRIMINATION](#) in programs or activities receiving federal financial assistance. It provides: "No otherwise qualified individual with handicaps in the United States . . . shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." This provision marks the first time the disabled were viewed as a class of people, similar to a race or gender. The disabled used Section 504 to demand and enforce equal footing as a class under the law, one that could demand facilities to accommodate their disability.

Although this language offered some protection from educational discrimination for those with disabilities, Section 504 did not go far enough. It only applied in limited situations, where the program or building used federal financial aid in the form of grants. Those with disabilities still faced discrimination in the private sector, in private schools, and in those public facilities that did not use federal grant money. The disabled still faced a great many inaccessible schools, testing situations that did not offer alternatives for the deaf, the blind, or those with other types of disability, and other, similar barriers to equal education and access.

## Encyclopedia of Everyday Law: Educational Accommodations

The Americans with Disabilities Act was passed on July 26, 1990, and signed into law by President George H. W. Bush. The intention of Americans with Disabilities Act was to fill the gaps left behind by Section 504. The ADA builds upon the legal language within Section 504, so that applied together, both laws would cover almost any situation, public or private, that the disabled might encounter.

The ADA bars employment and educational discrimination against "qualified individuals with disabilities." Title II of the Americans with Disabilities Act applies specifically to educational institutions, requiring them to make educational opportunities, extracurricular activities, and facilities open and accessible to all students. The ADA applies equally to public and private sector institutions, although the requirements for private schools and institutions are slightly less stringent.

### Defining Disability

Section 504 of the Rehabilitation Act of 1973 defines individuals with disabilities as those who have a physical or mental impairment which substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment. This category includes physiological disorders such as hearing impairment, vision impairment, or speech impairments; neurological disorders such as muscular dystrophy or multiple sclerosis; psychological disorders such as mental retardation, mental illness, or learning disabilities. The legislative definition does not spell out specific illnesses or impairments because of the difficulty of ensuring an all-inclusive list.

The deciding factor in determining whether or not a person suffers from a disability under Section 504 is whether the impairment limits one or more major life activities, such as walking, performing manual tasks, seeing, hearing, speaking, breathing, learning and/or working. The Americans with Disabilities Act defines a disability as a "physical or mental impairment that substantially limits one or more major life activity; a record of such impairment; or being regarded as having such impairment." The Americans with Disabilities Act covers obvious impairments such as difficulty in seeing, hearing, or learning, as well as less obvious impairments such as alcoholism, epilepsy, paralysis, mental retardation, and contagious and noncontagious diseases, specifically Acquired Immune Deficiency Syndrome (AIDS).

The difference between the two laws, as they apply to educational institutions, is that Section 504 applies to the recipients of grant monies from the federal government, while Title II of the Americans with Disabilities Act applies only to public entities, with some applications to private sector entities. These entities include nursery, elementary, secondary, undergraduate, or postgraduate schools, or other places of education, day care centers, and gymnasiums or other places of exercise or recreation.

### Accommodation of Disabilities

Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act cover students in virtually any public school district, college, or university because they receive some form of federal assistance. Some private schools, colleges, and universities also receive such assistance, and students are protected under Section 504, but Title II does not apply to them. Both laws apply to all programs of a school or college, not simply academics. These include extracurricular activities such as band, clubs, or academic teams, as well as athletics and any activity that might occur off campus.

Neither law requires that all buildings be made fully accessible to students or teachers with disabilities. Those buildings constructed after the Section 504 regulation was issued in 1977 must be fully accessible. For older buildings, the law requires that the program or activity be made accessible. Often, classes or extracurricular

activities are moved to another, more accessible, room to accommodate any disabled person who attends. An interpreter for the hearingimpaired or other types of assistance can be supplied.

## Reasonable Accommodation

One aim of the Americans with Disabilities Act was to make educational institutions more accessible for the disabled. This aim covers "reasonable accommodations" such as the following:

- Modification of application and testing
- Allowing students to tape-record or videotape lectures and classes
- Modification of class schedules
- Extra time allotted between classes
- Notetakers
- Interpreters
- Readers
- Specialized computer equipment
- Special education

Accommodation also includes physical changes to an educational institution's buildings, including the following:

- Installing accessible doorknobs and hardware
- Installing grab bars in bathrooms
- Increasing maneuverability in bathrooms for wheelchairs
- Installing sinks and hand dryers within reach
- Creating handicapped parking spaces
- Installing accessible water fountains
- Installing ramps
- Having curb cuts, sidewalks, and entrances that are accessible
- Installing elevators
- Widening door openings

Public accommodation is not required if a particular aid or service would result in either fundamental alteration of the services offered or the facility if the accommodation would impose an undue burden. (See *Southeastern Community College v. Davis*, 442 U. S. 397 (1979)). Under the U. S. Supreme Court's interpretation, Congress intended that undue burden and hardship shall be determined on a case-by-case basis.

## Testing and examinations

Section 309 of the Americans with Disabilities Act fills the gap regarding testing and examination not defined by Section 504 of the Rehabilitation Act of 1973 or Title II of the Americans with Disabilities Act. Any educational facility that receives federal money or is a public facility because it is a function of the state or local government as defined under Title II of the ADA is required to make any examination accessible to persons with disabilities. This requirement includes physical access to the testing facility, as well as any modification of the way the test is administered to assist the disabled. Modifications may include offering extended time, written instructions, or the assistance of a reader.

## Encyclopedia of Everyday Law: Educational Accommodations

Many licensing and testing authorities are not covered by Section 504 or Title II. In these cases, a provision in the ADA was included to assure that persons with disabilities are not prohibited from or disallowed in any educational, professional, or other

EXAMINATION opportunity because a test or course is conducted in an inaccessible location or is offered without the needed modifications to assist the disabled student. Modifications may include offering an examination with the assistance of a reader, in a braille or large print format, transcribers, or the proper computer equipment to help the disabled person.

Examiners may require proof of disability, but requests for documentation of the disability must be reasonable and must be limited to support for the modification or aid requested. The student or testing applicant may be required to bear the cost of providing such documentation for examination officials. Appropriate documentation would include:

- Letter from physician or psychiatrist or other qualified individual
- Evidence of prior diagnosis
- Evidence of prior accommodation

### Hidden Disabilities

Hidden disabilities are considered to be any physical or mental impairments that are not readily apparent to others. They include such conditions as learning disabilities, allergies, diabetes, epilepsy, as well as chronic illnesses such as heart, kidney, or liver disease. There are roughly four million American students with disabilities, many with impairments that are not immediately known without medical or diagnostic testing.

### Private and Religious Schools

The ADA covers private elementary and secondary schools as places of public accommodation, i.e. they must be physically accessible to those with disabilities. But these schools are not required to provide free appropriate education or develop an individualized educational program for students with disabilities. Any private school that receives federal grant monies or any type of federal assistance would then fall under the Department of Education's regulations regarding construction and alterations to the private school's structures and buildings, where it can be conveniently and economically incorporated.

### Postsecondary Education

Under Section 504, colleges and universities are not required to identify students with disabilities. They are required to inform all applicants of the availability of auxiliary aids, services, and academic adjustments. It is the student's responsibility to make his or her condition known and to seek out assistance.

### Additional Resources

*Americans with Disabilities Handbook*. Equal Opportunity Commission and U. S. Department of Justice. October 1991.

## Encyclopedia of Everyday Law: Educational Accommodations

*Auxiliary Aids and Services for Post–secondary Students with Disabilities: Higher Education's Obligations Under Section 504 and Title II of the ADA.* Office for Civil Rights, U. S. Department of Education. 1998.

*The Civil Rights of Students with Hidden Disabilities*

*Under Section 504 of the Rehabilitation Act of 1973.* Office for Civil Rights, U. S. Department of Education. 1995.

*Clearinghouse for information about federal government resources, pamphlets, and information regarding disabilities, maintained by the Presidential Task Force on Employment of Adults with Disabilities.* <http://www.disAbility.gov>.

*Student Placement in Elementary and Secondary Schools and Section 504 and Title II of the ADA.* Office for Civil Rights, U. S. Department of Education. 1998.

## Organizations

***American Council on Rural Special Education (ACRES)*** 2323 Anderson Ave., Suite 226, Kansas State University  
Manhattan, WA 66502  
Phone: (785) 532-2737  
Fax: (785) 532-7732  
URL: <http://www.ksu.edu/acres>

***American Speech Language-Hearing Association (ASHA)*** 1801 Rockville Pike  
Rockville, MD  
Phone: (301) 897-5700  
Phone: (800) 638-8255  
URL: <http://www.asha.org>

***Children with Attention Deficit Disorders (CHADD)*** 8181 Professional Place, Suite 201 Landover, MD 20785  
Phone: (301) 306-7070  
Fax: (301) 306-7090  
URL: <http://www.chadd.org>

***Clearinghouse of Disability Information Office of Special Education and Rehabilitative Services U. S. Department of Education***  
Switzer Building Room 3132 330 C Street SW Washington, DC 20202  
Phone: (202) 205-8241  
Fax: (202) 401-2608

***Dyslexia Research Institute, Inc.***

5746 Centerville Road

Tallahassee, FL 32308  
Phone: (850) 893-2216  
Fax: (850) 893-2440

URL: <http://www.dyslexia-add.org>

***Learning Disabilities Association of America (LDA)***

4156 Library Road

Pittsburgh, PA 15234

Phone: (412) 341-1515

Fax: (412) 341-8077

URL: <http://www.ldanatl.org>

***National Center for Learning Disabilities (NCLD)*** 381 Park Avenue South, Suite 1401 New York City, NY

10016 Phone: (212) 545-7510

Fax: (212) 545-9665

URL: <http://www.nclد.org>

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