

## **POST HIGH SCHOOL, TWO LAWS PROTECT THE RIGHTS OF COLLEGE AND UNIVERSITY STUDENTS WITH DISABILITIES: THE AMERICANS WITH DISABILITIES ACT (ADA) AND SECTION 504 OF THE REHABILITATION ACT.**

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The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 mandate equal access to postsecondary institutions for students with disabilities. This includes public universities, vocational schools, community colleges, and private institutions. Almost all private and public colleges run by nonreligious entities must obey the laws set forth by the ADA. If a school also receives federal financial assistance or allows its students to receive federal financial aid, it must also adhere to Section 504. While schools run by religious entities are not covered by the ADA, if they or their students receive any federal money whatsoever, they must comply with Section 504.

As a student with a disability, you may not:

- Be asked to disclose whether you have a disability;
- Be denied admission based on your disability, or;
- Be excluded from a particular class, program, or activity based on your disability.

You can, however, be denied admission into a school, program, or class based on other qualifications or lack thereof. If you do not meet minimum required scores, fail to submit a part of your application, or haven't taken the appropriate prerequisites, a school can reject your application.

### **The Americans with Disabilities Act?**

The ADA is a federal law, passed in 1990 and amended in 2008, that prohibits discrimination against individuals with disabilities in the public sphere. This includes schools, places of employment (that employ more than 15 individuals), public transportation, and anywhere else that is open to the public, even if it is a privately owned location (e.g., a private school, hotel, theatre, restaurant, or gym). All locations that the public can visit need to be accessible to individuals with disabilities and accommodations need to be given when necessary.

### **Who is covered by the Americans with Disabilities Act?**

Anyone with a disability that substantially limits one or more major life activity is covered by the ADA. The definition of what "substantially limits" is not specified, but generally a disability is considered substantially limiting if a person is unable to perform an activity as compared to an average person in the general population. Major life activities can range from breathing, hearing, seeing, walking and working. The general rule is that a major life activity is something that contributes to the proper functioning of the human body (seeing, sleeping, hearing, talking, moving) or the proper functioning of internal organs. The 2008 amendments to the ADA expanded major life activities to include self-care, the ability to perform manual tasks, learning, thinking, and working, among others.

The ADA also protects people who have a record or history of having a substantially limiting impairment, who are viewed as having a disability even when they do not, and those who associate with people who have disabilities. If someone is "regarded as" having a disability and can prove that they've been discriminated against because of this perception, they are entitled to protections under the ADA.

### **How does the Americans with Disabilities Act protect me as a student at college?**

The ADA prohibits discrimination based on disability. Title II, it states in Section 12132 that “Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity,” where a public entity is “(A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of title 49).” Public colleges and universities are covered by Title II. Title III, Section 12182, states, “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” Section 12181 provides that it applies to “...undergraduate, or postgraduate private school, or other place of education.” Private colleges and universities are covered by Title III. Note: colleges and universities run by religious organizations are not covered by the ADA.

### **Section 504 of the Rehabilitation Act of 1973?**

Section 504 of the Rehabilitation Act of 1973 states, “No otherwise qualified individual with a disability in the United States, as defined in section 7(20), shall, solely by reason of his or her disability, be excluded from the participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” It goes on to explicitly say that this applies to “a college, university, or other postsecondary institution, or a public system of higher education.” Essentially, if an agency, institution, or entity accepts federal financial assistance, or accepts students who receive federal financial aid, it is prohibited from discriminating against anyone based on their disability.

Section 7(20) of Section 504 defines an individual with a disability as “any person who has a disability as defined in Section 3 of the Americans with Disabilities Act of 1990.”

**The law are implemented differently during K–12 schools and college.** While you are a K-12 student, the school district is legally responsible for a student’s education and the school district must proactively identify and evaluate a student’s disabilities and then follow up with the relevant medical, educational, and auxiliary support.

**In college, a student must be proactive and make a request for reasonable accommodation. It is important to familiarize yourself with your College’s procedure because the process can vary.** If there is a disability office or coordinator, this should be your first point of contact. If there is no designated office, you will want to turn to either the dean of students or your academic advisor. They will either be able to help you themselves or point you in the right direction.

When you meet with the appropriate office, bring your documents which should include recent medical evaluations and your high school IEP or 504 plan. Explain the nature of your disability and identify the accommodations you are seeking and how these accommodations will help with your specific disability. Your school may request specific documentation or additional documentation to what you’ve already shown which you should provide. Importantly,

understand that you are totally responsible to make sure you have provided sufficient documentation to support your request for accommodation.

If you elect to not to disclose your disability and forego accommodations, later you may not claim discrimination or invoke protections under the law. As an example, a student with an undisclosed disability may fail multiple courses. If the student did not disclose his or her disability and request an accommodation, after the fact, he or she cannot legally claim that their disability hindered their ability to pass the courses or to meet the minimum requirements to stay in his or her major or program. Likewise, a student who discloses his or her disability and receives accommodations, but still does not pass a class cannot blame their disability for the failure and expect to be allowed to continue in the major. Students must be given an equal opportunity to try, but if, even with accommodations, the student is not qualified, the school is within its rights to issue failing grades. Therefore, it is extremely important that you timely request and make sure you receive appropriate reasonable accommodations.

In some cases a college can refuse a request for accommodation. In order to do so, the college must establish that (1) providing the accommodation would put an excessive financial and/or administrative burden on the institution; (2) providing the accommodation would change the nature of an academic program or the school's curriculum, including giving you an unfair advantage over other students, lowering academic standards, and significantly altering what is required of you to complete a class or program; or (3) the accommodation requested is of a personal nature (colleges are not required to provide students with disabilities with personal care attendants, personal readers, or personal devices).

While the school is obligated to provide you with equal access to education to the maximum extent possible, it is not required to give you the accommodation requested. If your school refuses to provide you with the specific accommodation you requested, it should suggest an alternative accommodation that accomplishes the same purpose.

If you feel that you are being illegally discriminated against, you have the following options: (1) file an appeal or complaint with your school through the disability office or dean of students; it is in your best interest to appeal or complain as soon as possible after the discriminatory event; (2) file a complaint with the Office for Civil Rights of the Department of Education; complaints must be made within 180 days of the event or within 60 days of the completion of an appeal with your school; (3) file a complaint with the U.S. Department of Justice; there is no limit to how long after the event you may file this type of complaint; (4) file a civil lawsuit; for ADA and Section 504 violations, lawsuits must be filed with a U.S. District Court within two years of the date of discrimination.

Both the ADA and Section 504 prevent your institution from retaliating against you if you file an appeal, complaint, or lawsuit. This would constitute a new form of discrimination and is illegal. If you feel that there have been consequences from your institution after filing, you may have grounds for another complaint.

**Please note: disability laws have various requirements that YOU MUST strictly adhere to. This includes filing timely administrative claims, governmental tort claims if your employer is a public entity and filing the civil lawsuit within the statute of limitations. As these deadlines vary, YOU SHOULD CONSULT WITH AN ATTORNEY ABOUT THE SPECIFIC REQUIREMENTS FOR YOUR POTENTIAL CLAIMS. If you fail to timely comply with the requirements to file a civil lawsuit for whistleblower retaliation, you will be barred from doing so.**

**The foregoing is for informational purposes only and is not legal advice. If you would like a consultation, please click on [Contact Us](#) and we will schedule an appointment with an appropriate attorney in our firm.**