

Higher Education's Obligations and the American with Disabilities Act, Section 504

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In 1973, Congress passed Section 504 of the Rehabilitation Act of 1973 (Section 504), a law that prohibits discrimination on the basis of physical or mental disability (29 U.S.C. Section 794). The following is an abbreviated version of the act:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his disability, 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 . . .

The Section 504 regulation applies to all recipients of [federal funding] including colleges, universities, and postsecondary vocational education and adult education programs.

The Office for Civil Rights in the U.S. Department of Education enforces regulations implementing Section 504 with respect to programs and activities that receive funding from the Department (34 C.F.R. Part 104 [1988]). The Section 504 regulation applies to all recipients of this funding, including colleges, universities, and postsecondary vocational education and adult education programs. Failure by these recipients to provide auxiliary aids to students with disabilities that results in a denial of a program benefit is discriminatory and is prohibited by Section 504.

SEC. 202. DISCRIMINATION. 42 USC 12132. 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.

Postsecondary School Provision of Auxiliary Aids

Subpart E of the Section 504 regulation contains the following requirement relating to a postsecondary recipient's obligation to provide auxiliary aids to qualified students who have disabilities:

A recipient . . . shall take such steps as are necessary to ensure that no disabled student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

34 C.F.R. 104.44 (d)(1). Section 35.160 (b)(1) of the Title II regulation states:

A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

It is, therefore, the institution's responsibility to provide these auxiliary aids and services in a timely manner to ensure effective participation by students with disabilities. If students are being evaluated to determine their eligibility under Section 504 or the ADA, the recipient must provide auxiliary aids in the interim.

The students themselves must identify the need for an auxiliary aid and give adequate notice of the need.

Postsecondary Student Responsibilities

A postsecondary student with a disability who is in need of auxiliary aids is obligated to provide notification of the nature of the disabling condition to the institution and to assist the institution in identifying appropriate and effective auxiliary aids. The students themselves must identify the need for an auxiliary aid and give adequate notice of the need. The student's notification should be provided to the appropriate representative of the institution who, depending upon the nature and scope of the request, could be one or more of the following: the institution's Section 504 or ADA coordinator, the appropriate dean, a faculty advisor, or professor. Postsecondary recipients, in response to a request for auxiliary aids, may make reasonable requests that the student provide supporting diagnostic test results and professional prescriptions for auxiliary aids. An institution also, on its own, may obtain a professional determination of whether requested auxiliary aids are necessary and, if so, what kind. The U.S. Office of Education provides the following list of auxiliary aids:

- taped texts
- notetakers
- interpreters
- readers
- videotext displays
- television enlargers
- talking calculators
- electronic readers
- Braille calculators, printers, or typewriters
- telephone handset amplifiers
- closed caption decoders
- open and closed captioning
- voice synthesizers
- specialized gym equipment
- calculators or keyboards with large buttons
- reaching device for library use
- raised-line drawing kits
- assistive listening devices
- assistive listening systems
- telecommunications devices for deaf persons

Institutions are not required to provide the most sophisticated auxiliary aids available...

Technological advances in electronics have vastly improved participation by students with disabilities in educational activities. Institutions are not required to provide the most sophisticated auxiliary aids available; however, the aids provided must effectively meet the needs of a student with a disability. An institution has flexibility in choosing the specific aid or service it provides to the student, as long as the aid or service selected is effective. These aids should be selected after consultation with the student who will use them.

Effectiveness of Auxiliary Aids

No aid or service will be useful unless it is successful in equalizing the opportunity for a particular student with a disability to participate in the educational program or activity. Not all students with a similar disability benefit equally from an identical auxiliary aid or service. The regulation refers to this complex issue of effectiveness in several sections. The specific reference to the effectiveness of auxiliary aids in the Section 504 regulation states:

Auxiliary aids may include taped texts, interpreters or other effective methods of making orally-delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions.

34 C.F.R. 104.44 (d)(2). There are other references to effectiveness in the general provisions of the Section 504 regulation which state, in part, that a recipient may not:

The institution must analyze the appropriateness of an aid or service in its specific context.

Provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; or Provide different or separate aids, benefits, or services to disabled persons or to any class of disabled persons unless such action is necessary to provide qualified persons who are disabled with aids, benefits, or services that are as effective as those provided to others.

The Section 504 regulation also states:

[A]ids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for disabled and nondisabled persons, but must afford disabled persons equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

34 C.F.R. 104.4 (b)(2). The institution must analyze the appropriateness of an aid or service in its specific context. For example, the type of assistance needed in a classroom by a student who is hearing-impaired may vary, depending upon whether the format is a large lecture hall or a seminar. With the one-way communication of a lecture, providing the service of a note taker may be adequate; but in the two-way communication of a seminar, an interpreter may be needed. Public institution also should be aware that under Title II of the ADA, in determining what type of auxiliary aid and service is necessary, the institution must give primary consideration to the requests of individuals with disabilities.

A student with a disability may not be required to pay part or all of the costs of that aid or service.

Cost of Auxiliary Aids

Covered institutions are responsible for the provision of effective auxiliary aids to students who are disabled. If an aid is necessary for classroom or other appropriate (non-personal) use, the institution must make it available, unless provision of the aid causes undue burden. A student with a disability may not be required to pay part or all of the costs of that aid or service. An institution may

not place a limit on its expenditure for auxiliary aids or services or refuse to provide auxiliary aids because it believes that other providers of these services exist, or condition its obligation to provide auxiliary aids on the availability of funds. In many cases, an institution may meet its obligation to provide auxiliary aids by assisting the student in obtaining the aid or obtaining reimbursement for the cost of an aid from an outside agency or organization, such as a state rehabilitation agency or a private charitable organization. However, the institution remains responsible for providing the aid.

Personal Aids and Services

An issue which is often misunderstood by institutions and students is the provision of personal aids and services to postsecondary students. Personal aids and services, including help in bathing, dressing, or other personal care, are not required to be provided by postsecondary institutions. The Section 504 regulation states:

Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

A covered postsecondary institution may not deny a service to a student with a disability if that service is offered to nondisabled students. Students with disabilities must be given equal access to regular medical treatment and health services offered by the institution. For example, if a college's health care unit offers a cholesterol test, a student with a disability who requests this service must have it provided.

The provision of personal services relating to certain individual academic activities is not required of postsecondary institutions. Personal attendants and individually prescribed devices are the responsibility of the student who has a disability and not of the institution. For example, readers may be provided for classroom use but institutions are not required to provide readers for personal use or for help during individual study time.

For More Information

For more information on Section 504 and the ADA and their application to auxiliary aids and services for disabled students in postsecondary schools, please contact the Center for Access-Ability Resources Services (CAAR) at <http://www.niu.edu/caar/>, 815.753.1303 (voice), 815.753.3000 (TTY), caar@niu.edu and Fax: 815.753.9570.

To obtain additional assistance, see Office of Civil Rights' list of its 12 offices, which contains the address and telephone number for the OCR office that services your area. Last update August 27, 1997.

Reference

U.S. Department of Education (1998). *Auxiliary aids and services for postsecondary students with disabilities*. Office of Civil Rights Web site: <http://www2.ed.gov/about/offices/list/ocr/docs/auxaids.html>