

# Equal Access to Education for Those in the Know:

## Protections for Postsecondary Students with Disabilities Under Section 504 of the Rehabilitation Act

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According to the National Center for Education Statistics, 11 percent of all undergraduates reported having a disability from 2011 to 2012, which is more than 200,000 postsecondary students at the undergraduate level alone.<sup>1</sup>

These students, and students with disabilities across all levels of postsecondary education, can gain equal access to education under Section 504 of the Rehabilitation Act of 1973.<sup>2</sup> However, because the mechanisms of protection at the postsecondary level differ from lower levels of education, these students must know and act to secure their rights. College students need to understand their rights under Section 504 and take specific and proactive action to ensure that they receive appropriate accommodations.

This article reviews these rights and Section 504 in an effort to assist counsel who do not practice in education law so that they may provide basic information to their clients and others when determining if a referral to an attorney experienced in this area is needed.

### Who is Covered by Section 504?

The fundamental purpose of Section 504 is anti-discrimination. It states: “No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or 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.”

For purposes of Section 504, an individual with a disability is any person with a mental or physical impairment

that substantially limits one or more major life activity and has a record of such impairment or is regarded as having such impairment. Thinking, concentrating, reading and the operation of major bodily functions, like neurological and brain functions, are “major life activities.” Therefore, college students with attention-deficit/hyperactivity disorder, dyslexia, depression, psychological disorders and other long-term mental illnesses can qualify for accommodations under Section 504.

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## Obtaining Section 504 Protection

Under Section 504, colleges must give students reasonable academic adjustments and auxiliary aids (or “accommodations”), and must have requirements and procedures in place for students to obtain them. Importantly, in postsecondary settings, students must seek out these needed accommodations. This is different than what students and their parents may have experienced in lower levels of school where the school plays an active role in identifying students with disabilities. For instance, a student who had an individualized education program (IEP) in high school is likely eligible to receive accommodations under Section 504, but he or she must seek out and obtain these accommodations in college.

It is vital that a student seeking accommodations notify his or her college and follow the college’s specific process to receive accommodations as soon as possible. In misconduct actions, courts have found that a school is not required to excuse a student’s behavior based on disabilities that are brought up after the fact. See *Halpern v. Wake Forest*, 669 F.3d 454 (4th Cir. 2012).

Information relating to the college’s process is usually available on its website, in handbooks or in other documents available to students. Also, there should be at least one staff member dedicated to understanding Section 504 and the college’s responsibilities to students with disabilities. This staff member is commonly called a disability coordinator or ADA coordinator.

As part of this process, the student must provide proof of his or her disability if they are to be granted the requested accommodation. Required proof may include a current diagnosis, the credentials of the professional making the diagnosis, and a description of how the diagnosis affects the student’s major life activities and academic performance.

Once the process has been followed, the student and institution should devise and agree upon a plan for appropriate accommodations.

## Accommodations at the Postsecondary Level

The U.S. Supreme Court has held that a reasonable accommodation is one that gives an otherwise qualified student with disabilities “meaningful access” to his or her desired program or services. *Alexander v. Choate*, 469 U.S. 287, 300 (1985). Common examples of reasonable accommodations for college students include extending time for test-taking, providing note takers, providing recording devices, extending time for assignments and providing distraction-free, test-taking environments for the college student.<sup>3</sup>

For students having an IEP in high school, understanding or identifying what accommodations they need in college may be straightforward. However, many students only identify or experience their disability once they reach college; thus, understanding or identifying needed accommodations may prove more difficult. But, colleges must help.

While students bear the responsibility to seek accommodations, courts have consistently held that schools must “gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary to enable the individual to meet the standards in question” and must also implement such accommodations to allow the disabled college student to access the program to the same extent as her non-disabled colleagues pursuant to the Rehabilitation Act and the American with Disabilities Act (ADA). *Wong v. Regents of University of California*, 192 F.3d 807, 818 (9th Cir. 1999). *Schools Id.*

## The Need for Advocacy

Despite the purpose and protections of Section 504, students may experience undue resistance or hurdles when seeking accommodations. Colleges and professors

unaccustomed to accommodating students with disabilities, especially those with mental disabilities, may not know how to provide accommodations or may simply choose not to do so for various reasons. For example, a professor may not want to record a lecture for fear it will stifle the free exchange of ideas in the classroom. Notably, because colleges are not required to alter the substance of their coursework, there are no separate special education professors trained to work with their students with disabilities.



For college students who experience inaction on the part of their school or other forms of discrimination based on their disabilities, Section 504 requires that a school have grievance procedures to file a complaint and seek equitable resolutions. This grievance process is not the same as those laid out for high school students, but it still must provide a procedure for the college student to quickly obtain a resolution.

In the event the school refuses or fails to provide appropriate accommodations, the student can file a complaint with the U.S. Department of Education Office of Civil Rights (OCR) or file suit in federal court under Section 504.<sup>4</sup> In cases of a dismissal, to make a claim under Section 504, the student must show:

1. He or she has a disability covered by the law;
2. That, other than the disability, he or she is qualified to be a student in the academic program;

3. He or she was dismissed solely because of her disability; and
4. Section 504 applies to the school as a result of it receiving federal funds. *See Newman v. San Joaquin Delta Community College*, 814 F.Supp. 2d 967 (E.D. Ca. 2011) (citing *Zukle v. Regents of Univ. of Cal.*, 166 F.3d 1041, 1045 (9th Cir. 1999) (explaining 29 U.S.C. § 794 (Rehabilitation Act provision) and 42 U.S.C. § 12132 (ADA provision))).

With more than 200,000 college students reporting a disability, many students will face the challenge of obtaining equal access to education at the postsecondary level. Section 504 requires institutions to take steps to ensure students have the right to education regardless of their disabilities and to be free from discrimination.

However, the requirements of postsecondary institutions are substantially different than for primary and secondary schools. The biggest difference is that the

responsibility of identifying the disability, notifying the academic institution and requesting accommodations falls on the student. Accordingly, college students facing a disability for the first time, or those who are only aware of the process involved at the high-school level, must learn their rights in college. It is paramount for college students with disabilities to understand their rights and responsibilities to ensure those rights are protected.

Furthermore, such students must be aware they may face institutions or professors without the knowledge or understanding of how to appropriately accommodate college students with disabilities. Students must therefore be prepared to file complaints directly with the school and negotiate a resolution or, in the event a resolution is not reached, be prepared to file a case with the OCR or in federal court. **NL**

1. U.S. Department of Education, National Center for Education Statistics (2016). *Digest of Education Statistics, 2015* (2016-014), Chapter 3.

2. 34 C.F.R. Part 104. The Rehabilitation Act applies to postsecondary institutions that receive federal financial assistance, including federal student loans.
3. Another important distinction between postsecondary and lower levels of education is that at the postsecondary level, Section 504 requires accommodations, not modifications. Accommodations help a student learn and complete the same assignment or test as everyone else; whereas, a modification may alter the test or assignment thereby changing the standard of learning. Section 504 does not require colleges to alter their academic program.
4. By accepting federal funds, state institutions usually waive their 11th Amendment immunity and, therefore, can be sued in federal court under Section 504.



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