



*California's Protection & Advocacy System
Toll-Free (800) 776-5746*

Rights of Students with Disabilities in Higher Education

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A Guide for College and University Students

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I think that I have been discriminated against by my college or university. Are there any laws that protect me?

Yes. The two primary federal laws that protect people with disabilities from discrimination in higher educational settings like colleges and universities are the Americans with Disabilities Act of 1990, amended in 2008,¹ and Section 504 of the Rehabilitation Act of 1973 (Section 504).² Congress subsequently expanded protection for people with disabilities under the ADA through passage of the ADA Amendments Act of 2008 (ADAAA). In this guide, we use "the ADA" to refer to both the original 1990 Act and the 2008 Amendments Act because they are applied as a single body of law.

The ADA guarantees equal opportunity for individuals with disabilities in public and private sector services and employment.³ The ADA is split into sections called "Titles," similar to chapters in a book. Generally, the ADA makes it illegal to discriminate against someone because she or he has a disability.⁴

Specifically, Title II of the ADA prohibits *all* state and local governmental entities, including public colleges and universities, from discriminating against people with disabilities.⁵ Title II covers state universities such as Chico State University, state and local community colleges such as Pasadena Community College, and the University of California school system, such as UC Davis.⁶

Title III of the ADA prohibits private colleges and universities from discriminating against people with disabilities.⁷ Title III of the ADA covers private universities such as the University of Southern California and Stanford University.⁸

¹ 42 U.S.C.A. §§ 12101-12300.

² 29 U.S.C.A. §§ 701-796.

³ 42 U.S.C. §§ 12111-12, 12131-32.

⁴ 42 U.S.C. § 12101.

⁵ 42 U.S.C. §§ 12131-32.

⁶ *See id.*

⁷ 42 U.S.C. § 12182.

⁸ *See id.*; 34 C.F.R. § 104.31.

Section 504 prohibits “*any program receiving federal financial assistance*” from discriminating against an individual because of his or her disability.⁹ Section 504 covers any college or university that receives direct or indirect federal financial assistance, including those that accept students who receive federal financial aid. Thus, Section 504 covers almost all colleges and universities.

Even though the statutes are different, courts will usually interpret provisions of the ADA consistently with similar provisions of Section 504.

Do the ADA and Section 504 cover religious colleges and universities?

The ADA does not cover private colleges and universities controlled by religious entities. However, even if a college or university is controlled by a religious entity, it will be covered by Section 504 as long as it receives *any* federal financial assistance. For example, a school would be covered if it accepted any students who receive federal financial aid for their education.

Do the ADA and Section 504 cover professional, trade, vocational and technical schools?

Yes, in almost all cases. To determine which law applies to a particular professional, trade, or technical program, you must find out whether that program is funded through state, local, or private means, and whether it receives federal financial assistance. Apply the criteria described in Question Nos. 1 and 2 above, to your professional, trade, vocational, or technical school.

Is anyone with a disability protected by these laws?

To be protected by Section 504, you must be a "qualified individual with a disability."¹⁰ Titles II and III of the ADA protect similarly defined individuals. With regard to educational programs, the term "qualified" means that you

⁹ 29 U.S.C. § 794 (emphasis added).

¹⁰ 29 U.S.C. § 794.

are capable of fulfilling the essential functions and requirements of the program, with or without the provision of "reasonable modifications."¹¹ You can meet the definition of having a "disability," and thus be protected under the ADA and Section 504, under the following circumstances:

- A. You have a physical and/or mental impairment that substantially limits one or more major life activities, including, *but not limited to*, caring for yourself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing and working. Major life activities may also include school-related tasks such as learning, reading, concentrating, thinking, and communicating. Major life activities also include the operation of "major bodily functions," including, *but not limited to*, functions of the immune system; normal cell growth; digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions; or
- B. You have an impairment that is in remission or substantially limits you occasionally (rather than constantly), but if it were active, it would substantially limit you as defined above; or
- C. You have a *record* or *history* of having a physical and/or mental impairment that substantially limits one or more major life activities, as described above; or
- D. You are *regarded* as, or have been *misclassified* as, having a physical and/or mental impairment, *and* you have been subjected to a discriminatory act that is illegal under the ADA and/or Section 504. In other words, someone in authority has perceived you as being a person with an impairment, and has unlawfully discriminated against you because of that perception, even though in fact you have no disability, or the disability you have does *not* substantially limit a major life activity. (For example, you might have extensive scar tissue on your face from a burn. Such a circumstance might not

¹¹ Reasonable modifications are discussed in Question Nos. 7, 8, and 9.

substantially limit a major life activity as described above and in Question No. 5. Nevertheless, you might be discriminated against because of myths, fears and stereotypes associated with that perceived disability.) Note that the emphasis of the ADA is on whether you were unlawfully discriminated against. It does not matter whether the person or institution regarded your impairment as being one that substantially limits one or more major life activities. Even if they discriminated against you on the basis of an impairment that they perceived was *not* one that substantially limits one or more major life activities, the discrimination is still unlawful under the ADA.

What if my impairment lasts less than six months?

Your impairment will not meet the ADA or Section 504's definition of a "disability" if your impairment is expected to, or in fact does, affect you for six months or less.¹²

How do I know if my impairment “substantially limits” a major life activity?

An institution of higher learning, such as a college or university, determines whether or not an impairment “substantially limits” a major life activity on a case-by-case basis. To determine whether your impairment substantially limits your ability to engage in a major life activity, the condition, manner, and duration under which you can perform that activity will be considered, and compared to the ability of most people to participate in that activity.

However, when evaluating whether you are substantially limited in your ability to engage in a major life activity, an institution of higher learning *may not* take into account how your use of "mitigating measures" might reduce the degree to which your impairment limits you. A “mitigating measure” is a device or practice that you use on your own to reduce or eliminate the effects of your impairment. Examples of mitigating measures include, *but are not limited to*:

¹² 42 U.S.C. § 12102; 29 U.S.C. § 705.

- medication; medical supplies, equipment, or appliances; low-vision devices (devices that magnify, enhance or otherwise augment a visual image, excluding ordinary eyeglasses or contact lenses –see the final paragraph of Question No. 5), prosthetics, including limbs and devices; hearing aids and cochlear implants or other implantable hearing devices; mobility devices; or oxygen therapy equipment and supplies;
- use of assistive technology;
- use of a job coach, personal assistants or service animals;
- surgical interventions (such as a tracheotomy or insulin pump);
- reasonable accommodations or auxiliary aids or services; or
- compensatory strategies (i.e., learned behavioral or adaptive neurological modifications) to "work around" the impairment, such as taking extra time to study to compensate for a learning disability.

For example, if you take medication to control attention-deficit/hyperactivity disorder (ADHD), your college or university may not take into account how the medication reduces the effect that ADHD has on your major life activities.

Note: the one mitigating factor an institution of higher learning *may* take into account is the use of ordinary prescription glasses or contact lenses, that is, glasses or lenses designed to fully restore visual acuity and correct refractive error. Therefore, if your ability to see is not substantially limited when you are wearing eyeglasses or contact lenses, then your vision impairment will not be considered a "disability" under the ADA or Section 504.

What kinds of actions are discriminatory under these laws?

Some examples of discriminatory conduct by a college or university prohibited by Section 504 include:

- Denying a qualified individual with a disability admission because of her/his disability;¹³
- Excluding a qualified student with a disability “from any course, course of study, or other part of its education program or activity” because of her/his disability;¹⁴ and
- Counseling a qualified student with a disability toward more restrictive career objectives than other students.¹⁵

These actions would also be considered discriminatory under the ADA, which gives students with disabilities the right to the same goods, services, facilities, privileges, advantages as non-disabled students, in the most integrated setting appropriate to their needs.¹⁶

Do colleges and universities have to provide students with disabilities reasonable modifications or accommodations for their disabilities?

Yes. To ensure that their programs and activities are fully accessible to students with disabilities, colleges and universities are required to provide “reasonable modifications,” which are also sometimes known as “reasonable accommodations.”¹⁷ Specifically, colleges and universities are required to make reasonable modifications in their practices, policies and procedures, and to provide auxiliary aids and services for persons with disabilities, *unless* to do so would fundamentally alter¹⁸ the nature of the goods, services, facilities, privileges, advantages and accommodations

¹³ 34 C.F.R. § 104.42(a).

¹⁴ 34 C.F.R. § 104.43(c).

¹⁵ 34 C.F.R. § 104.47(b).

¹⁶ 42 U.S.C. § 12182(b)(1)(B).

¹⁷ 42 U.S.C. § 12182(b)(2)(A)(ADA requirements).

¹⁸ DEPARTMENT OF JUSTICE, ADA TITLE III TECHNICAL ASSISTANCE MANUAL COVERING PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES, section III-4.3600 (1993), <http://www.ada.gov/taman3.html> (A “fundamental alteration” is a modification that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.).

they offer, or would result in an undue financial or administrative burden on the institution.¹⁹

Of course, if you claim that your college or university discriminated against you because it "regards" you as having a disability (as defined in Question No. 4, above) even though you do not have such a disability, you would not be entitled to reasonable accommodations or modifications. You would, however, be entitled to have the college or university stop discriminating against you.

What are some examples of modifications to a policy, practice or procedure?

Reasonable accommodations or modifications can take many forms, depending on the individual student's needs. Examples of modifications that colleges and universities might be required to make to their policies, practices and procedures to accommodate students with disabilities include:

- Not assessing penalties for spelling errors on papers or exams;
- Allowing course substitutions for certain required or pre-requisite courses;
- Allowing extra time on exams;
- Allowing a reduced course load and extended time within which to complete degree requirements; or
- Providing housing accommodations for a student's personal care assistant.

¹⁹ 28 C.F.R. § 36.104 ("undue burden means significant difficulty or expense"); ²⁰ 42 U.S.C. § 12182(b)(2)(A)(ii)-(iii).

What are some examples of auxiliary aids and services?

Auxiliary aids and services can take many forms, depending on the individual student's needs. Examples of auxiliary aids and services that colleges and universities might be required to provide for students with disabilities include:

- Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
- Note takers;
- Qualified readers, tape-recorded or digitally recorded texts, or other effective methods of making visually delivered materials available to individuals with visual impairments or learning disabilities;
- Class materials in alternative formats (e.g. texts in Braille, on audiotape, or as digital files); or
- Acquisition or modification of equipment or devices.

How do I get an accommodation for my disability?

The process for getting accommodations will differ slightly from school to school, so you should start by contacting your school's disabled student services program. Many colleges and universities also have an ADA or Section 504 coordinator. If neither resource exists at your school, ask the dean of student affairs or your academic advisor.

If you are not sure what accommodations you need, seek assistance from your school's disabled student services program and your medical professional(s). If you are a client of the Department of Rehabilitation, approach your vocational rehabilitation counselor.

Be sure to make your accommodation request in writing. This request should identify you as a student with a disability, describe how your disability or disabilities affect/s your participation in school, and identify the specific accommodations that you need, and how they will help you. You should also state the deadline by which you expect a response to your

request. If you do not receive a response within that time, you should assume that your request has been denied and begin the appeal and complaint procedures.²⁰

You can find a sample request for accommodation at the end of this manual (Appendix A).

What kind of documentation must I have to demonstrate my need for a reasonable accommodation?

Each college or university has its own requirements for documentation necessary to prove the existence of a disability and the need for an accommodation. However, a college or university may not make these requirements so burdensome that they prevent individuals with disabilities from getting reasonable accommodations. You can find out if your school has any documentation of disability requirements by contacting the school's disabled student services program, the ADA or Section 504 coordinator, the dean of student affairs or your academic advisor.

Colleges and universities are only required to accommodate a student's disability or disabilities if the relevant school personnel are aware that the student has a disability or disabilities. If you seek a reasonable accommodation, and the school requests proof of your disability, you must provide that proof. The most effective way to show that you are entitled to reasonable accommodations is to get a letter from a medical professional who is familiar with you and your disability.

Documentation of your disability must be *current*. It must reflect your abilities and limitations at the time you request the accommodation. Therefore, seek documentation from the medical professional(s) who has most recently treated you for your disability.

You do not necessarily need *recent* documentation to establish proof of disabilities that do not substantially change over time. For example, some learning disabilities, such as dyslexia, do not show much change after an

²⁰ Appeal and complaint procedures are described in Question Nos. 23-36.

individual reaches age 18. Some physical disabilities may also show limited change over time. However, all documentation still needs to be *current* so that it reflects your *current* abilities and limitations. It is wise to supplement documentation that is more than three years old with a letter from your medical professional stating that the documentation accurately reflects your *current* abilities and limitations.

If you have a disability that may change substantially over time, or changes when you are in different environments, your school may require that you provide *recent* documentation to establish proof of your disability. This means that the school may require that you obtain updated testing and documentation every three years. An example of a disability that may change over time is attention-deficit/hyperactivity disorder (ADHD). An example of a disability that may become more or less severe with a change of environment is multiple sclerosis.

Your school may require that the person diagnosing your disability have certain credentials, such as a Ph.D. However, your school may insist on this requirement *only* when it is not a burden to the individual getting tested to have the test conducted by a person with a particular credential, or when a person with a particular credential must perform the test in order to ensure accuracy.

I must obtain current documentation and/or get recent test results regarding my disability and need for reasonable accommodations. How can I get the documentation and/or testing that I need?

Before gathering the documentation or getting any testing, find out exactly what kind of documentation and/or testing your school requires by contacting your school's disabled student services program, the ADA or Section 504 coordinator, the dean of student affairs, or your academic advisor.

If you have a medical professional who currently treats you for your disability, approach her/him to obtain the required documentation and/or testing. If you do *not* have a medical professional who currently treats you for your disability, find out if your school has a student health center or

offers student health services. You may be able to obtain the required documentation and/or testing through them.

You may also wish to contact the California Department of Rehabilitation, an agency charged with providing services to persons with disabilities that will lead to employment. To find the Department of Rehabilitation office nearest you, visit their website at <http://www.rehab.cahwnet.gov/dor-locations/index.asp>, or contact their central office:

Mailing address:

P.O. Box 944222
Sacramento, CA 94244-2220

Physical address:

721 Capitol Mall
Sacramento, CA 95814-4702
Telephone: (916) 324-1313
TTY/TDD: (916) 558-5807

What should my medical professional's letter say to support my request for accommodations?

To be effective, your medical professional's letter should include at a minimum the following information:

- A. A statement giving your medical professional's name, contact information (address, telephone, e-mail, etc.), and describing her/his credentials, area of specialty and information about any special qualifications that she or he has for helping people with your specific type of disability, including any experience working with other students who have similar impairments.
- B. A description of any tests, assessments and evaluations that your medical professional performed on your behalf, which identifies any records or other materials reviewed as part of the testing process;
- C. A description of your disability-related impairments, as they relate to your ability to learn and participate in your educational program;
- D. A description of your disability and identification of your specific diagnoses, including how you meet diagnostic criteria, and the facts and observations upon which your medical professional based the diagnosis; and
- E. A list of accommodations that your medical professional recommends to allow you to participate fully and equally in your educational program. This section should describe how your medical professional decided on these accommodations, and how she or he expects that they will help you.

You should ask your medical professional to be as specific as possible in providing all of this information. You can find a sample medical professional's letter at the end of this manual (Appendix B).

Is my college or university's admissions office permitted to ask me about having a disability in the application or interview process?

No. A school may not ask an applicant if he or she has a disability or a history of a disability in the application process. For example, a school may not ask an individual who uses a wheelchair if that individual would be

limited to classes on the ground floor of a building. Nor may a school ask an applicant with a learning disability if that applicant would be able to handle the large amount of reading required for college courses.

On the other hand, a school may ask applicants to identify themselves *voluntarily* as having a disability if it is requesting this information solely for affirmative action purposes. The school must clearly indicate that it is requesting the information for this purpose, that the disclosure is voluntary, that it will not release such information without the applicant's consent, and that it will not subject the applicant to any adverse treatment as a result of whether she or he chooses to disclose her or his disability.

If the college or university requires me to take a standardized test for admission, can I take that test with reasonable accommodations?

Yes. Note that such standardized tests, including SAT (Standardized Admissions Test), ACT (American College Testing), LSAT (Law School Admission Test), MCAT (Medical College Admission Test), GMAT (Graduate Management Admission Test), GRE (Graduate Record Examination), and TOEFL (Test of English as a Foreign Language), are typically administered by organizations other than your college, university or trade school. These organizations must allow you reasonable accommodations necessitated by your disability. Because each organization may have different requirements or processes for requesting the accommodations, it is crucial that you research these requirements and meet any deadlines for submitting supporting documentation long before the actual test day.

Even if you diligently follow their rules, you may be disappointed to learn that the organization fails to provide the accommodations that you need on test day. You should prepare for this possibility by researching the organization's appeals process, in case you have to take the test again because of the organization's failure to provide the agreed-upon accommodations.

Below is a list of the most prominent testing organizations, the tests they administer and contact information regarding disability-related questions.

Contact Information about:

SAT

General Information

College Board SAT Program
P.O. Box 025505
Miami, FL 33102
Phone: (866) 756-7346
Website: <http://sat.collegeboard.org/home>

Accommodation Information

College Board – Services for Students with Disabilities College Board SSD Program

P.O. Box 8060
Mt. Vernon, IL 62864-0060

Phone: 609-771-7137
TTY: 609-882-4118
Fax: (866) 360-0114
E-mail: <mailto:ssd@info.collegeboard.org>
Website: <http://www.collegeboard.com/ssd/student/index.html>

ACT (National Office)

General Information

ACT National Office
500 ACT Drive
P.O. Box 168
Iowa City, IA 52243-0168
Telephone: (319) 337-1000
Website: <http://www.act.org/aap/disab/index.html>

ACT (West Region Office)

General Information

ACT West Region Office
2880 Sunrise Boulevard, Suite 214
Rancho Cordova, CA 95742-6103

Telephone: (916) 631-9200
Fax: (916) 631-8263
Website: <http://www.act.org/contacts/field.html>
(Lists all ACT Region Offices)

LSAT (Law School Admission Test)

General Information

Law School Admission Council
662 Penn Street
PO BOX 40
Newtown PA 18940
See <http://www.lsac.org/AboutLSAC/contact-lsac.asp> for other contact information

Accommodations Information

Law School Admissions Council (LSAC) Accommodated Testing

US mail address:

LSAC Accommodated Testing
PO BOX 8512
Newtown PA 18940-8512
USA

Courier address:

LSAC Accommodated Testing

662 Penn Street
Newtown PA 18940-0995
USA
Telephone: (215) 968-1001
TTY/TDD: (215) 968-1128
Fax: (215) 504-1420
E-mail: accom@LSAC.org
Website: <http://www.lsac.org/JD/LSAT/accommodated-testing.asp>

MCAT (Medical College Admission Test)

General Information

Association of American Medical Colleges
Medical College Admission Test
2450 N St., NW
Washington, DC 20037
Phone: 202-828-0690
E-mail: mcats@aamc.org (cannot accept attachments.)
Website: <https://www.aamc.org/students/applying/mcat>

Accommodations Information

Association of American Medical Colleges
Medical College Admission Test
AAMC
MCAT Office of Accommodated Testing
Attn: Saresa Davis, Mailroom Supervisor
2450 N Street, NW
Washington, DC 20037
E-mail: accommodations@aamc.org
Website: <https://www.aamc.org/students/applying/mcat/accommodations/>

GMAT (Graduate Management Admission Test)

General Information

Graduate Management Admission Council

11921 Freedom Drive, Suite 300
Reston, VA 20190-5670
Telephone: (866) 505-6559 (toll free)
Fax: +1(703) 668-9601
E-mail: webmaster1@gmac.com
Website: www.gmac.com

Accommodations Information

Website:
<http://www.gmac.com/gmac/thegmat/testtakersupport/accommodations-for-test-takers-with-disabilities>

GRE (Graduate Record Examination)

General Information

Educational Testing Service/GRE-ETS
P.O. Box 6000
Princeton, NJ 08541-6000
Telephone: (866) 473-4373 (toll free)
TTY/TDD: (609) 771-7714
Fax: (610) 290-8975 (note different area code)
Website: <http://www.ets.org/gre>

Accommodations Information

Educational Testing Service/GRE-ETS
ETS Disability Services
P.O. Box 6054
Princeton, NJ 08541-6054
Telephone: (866) 387-8602 (toll free)
TTY/TDD: (609) 771-7714
Fax: (609) 771-7165
Email: stassd@ets.org
Website: http://www.ets.org/gre/revised_general/register/disabilities

TOEFL (Test of English as a Foreign Language)

General Information

Educational Testing Service/TOEFL Services

P.O. Box 6151

Princeton, NJ 08541-6151

Telephone: (877) 863-3546 (toll free)

TTY/TDD: (609) 771-7714

Fax: (610) 290-8972 (note different area code)

Website: www.ets.org/toefl**

**Note: Type "disability" in this website's search box to find out how to obtain accommodations for the TOEFL, which is administered in various formats.

Will it be reported that I took a standardized test with accommodations? If so, is the school allowed to give a different weight to my test scores than they give to the test scores of students who did not take the test with accommodations?

Some of the organizations listed above may “flag” your test scores by reporting that you took the test under “non-standard conditions.” Contact the relevant organization to determine how it will report your test scores to the school to which you are applying.

Even if they “flag” your test scores, none of these testing organizations may report what disability you have, or what reasonable accommodation(s) you received. Moreover, the school may not inquire about the “non-standard” conditions under which you took the exam. Most importantly, a college or university may not give different weight to your standardized test scores because you received a reasonable accommodation. The school must give your scores the same weight as those of any applicant to the same school who took the same standardized test without reasonable accommodations.

I am attending a school that *does not* provide housing options for its students. Is the school required to provide me with housing close to campus as a reasonable accommodation?

No. If your school does not provide housing options for any of its students, it is not required to provide you with housing close to campus, or any housing, as a reasonable accommodation.

I am attending a school that *does* provide housing options to its students. May I request reasonable accommodations with regard to my housing? Is the school required to provide me with an accessible housing option?

Yes. If your school provides housing options for any student, then it is required to provide both reasonable accommodations to its housing policy and accessible housing options. The school may not charge more for accessible housing or housing provided with a reasonable accommodation than it charges for comparable inaccessible housing. Examples of reasonable accommodation in campus housing include housing located close to campus or to a shuttle or bus stop, priority for single or larger units, or allowing a student to have a service or companion animal despite a “no pets” policy. The school must make accessible housing available in a number of housing options, so that students with disabilities have housing opportunities equal to those of students without disabilities. Furthermore, campus-sponsored activities taking place in student housing must be held in accessible areas, and reasonable accommodations must be provided.

My school requires that I take certain classes in order to graduate. Because of my disability, those classes will be difficult for me to complete. May I obtain a course substitution for the requirement?

The school is *not required* to provide you with a course substitution nor allow you to skip that requirement, if it would result in a substantial change to an essential element of the school's curriculum. Schools are allowed to set their academic standards, and are not required to lower their standards as a reasonable accommodation.

However, the school must undertake a diligent assessment of the available academic options before denying a request for a course substitution. If it determines that offering you a course substitution would lower academic standards or fundamentally alter an essential part of the school's academic program, then the school may deny your request. Even so, the school must provide you with any necessary reasonable accommodation(s) in order for you to complete the required course.

May my college or university ever refuse to provide me with an accommodation that I need?

Yes, but only under limited circumstances. The ADA and Section 504 only require schools to provide accommodations that are reasonable. Your school should not refuse to provide you with an accommodation, unless it can show that:

- A. Providing the accommodation would create an undue financial or administrative burden for the school;
- B. Providing the accommodation would fundamentally alter the school's academic program;
- C. The requested accommodation is of a personal nature (for example, assistance with eating or help with toileting).

In response to your request for a specific accommodation, your school may suggest an alternative accommodation or way to provide equal access. You do not have to accept the school's suggested accommodation, but you should keep in mind that you are not entitled to "the best" accommodation – just an accommodation that is effective and reasonable.

My school denied the accommodation I requested. The reason I was given for the denial was that the accommodation would create a substantial modification of the school's academic standards. Is this a legitimate reason for the denial of a reasonable accommodation?

It depends. Courts generally defer to a school's decision with regard to academic standards. The reason for this deference is that schools are

generally better equipped than courts to determine whether a student meets that school's reasonable standards for academic achievement.

However, courts carefully review the school's reasoning to ensure that the school is not hiding discriminatory intent behind academic standards. In order to demonstrate that its motives are not discriminatory, a school has an obligation to provide serious consideration to a student's request for an accommodation.

After a student has informed the school that she or he has a disability and needs a reasonable accommodation, the school has a duty to:

- A. Make itself aware of the nature of the student's disability;
- B. Explore alternatives of accommodating the student; and
- C. Exercise professional judgment in deciding whether appropriate accommodations would give the student the opportunity to complete the academic program without fundamentally or substantially modifying the school's academic standards.

The school must perform these duties in good faith. It is not enough for the school to merely speculate that a suggested accommodation is not possible, or that it would not be an effective accommodation. When deciding not to provide an accommodation, the school must prove that it thoroughly considered whether the requested accommodation would substantially or fundamentally alter the school's academic standards. If the school can demonstrate that it has given appropriate consideration to the request, a court will likely find that the denial of the request was legal. If the school cannot demonstrate this, a court will be far less likely to defer to the school's judgment in deciding not to provide the accommodation.

What should I do if my school refuses to give me the accommodations that I need or otherwise discriminates against me because of my disability?

If your school refuses to provide you with the accommodations that you need or otherwise discriminates against you because of your disability, you can do any or all of the following:

- File an internal grievance/appeal with the school;
- File a complaint with the Office for Civil Rights of the U.S. Department of Education (OCR) or the U.S. Department of Justice (DOJ);
- Try to resolve things informally through private mediation; and/or
- File a lawsuit

How do I file an internal grievance or appeal with my school?

Grievance and appeal procedures differ from school to school. If you want to file an internal grievance with your school, find out what the grievance/appeal process is from your school's disabled student services program, ADA or Section 504 coordinator, or dean of student affairs. File your internal grievance as soon as possible and no later than 180-days after the discrimination has occurred.

Do I have to file a grievance with my school before I can file a complaint with the U.S. Department of Justice (DOJ) or with the Office for Civil Rights of the U.S. Department of Education (OCR)?

No. You do not have to file an internal grievance with your school to be able to file a complaint with the DOJ or the OCR, but it may be helpful to do so. If you have not filed an internal grievance with your school, the DOJ or OCR investigator assigned to your case may ask you to do so before she or he reviews your complaint.

When and how do I file a complaint with the Office for Civil Rights of the U.S. Department of Education (OCR)?

OCR investigates violations of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973 (See Question No. 1 for the definitions of Title II and Section 504.). To file a complaint with OCR, use OCR's online complaint form at:

<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>, or contact the OCR office for California:

San Francisco Office
Office for Civil Rights
U.S. Department of Education
50 Beale Street, Suite 7200
San Francisco, CA 94105-1813

Telephone: (415) 486-5555
Facsimile: (415) 486-5570

TTY/TDD: (877) 521-2172
Email: ocr.sanfrancisco@ed.gov

Website: <http://wdcrobcopl01.ed.gov/CFAPPS/OCR/contactus.cfm>

Complaints with OCR must be filed within 180-days of the date that you were discriminated against *unless* you can get a waiver (see Question No. 30, below) or you have already gone through your school's internal grievance process. This is because OCR will not consider a complaint that is in the process of being decided by another entity, such as your school. If you have gone through your school's grievance process, but are not satisfied with the result, you may file a complaint with OCR. However, you must file your OCR complaint within 60 days of the school's decision on your grievance.²¹

OCR encourages students (or anyone making a complaint) to use *e-mail* or *fax* to communicate with OCR when possible. For those without current e-mail accounts, Internet access may be freely available from your local public library, and free e-mail accounts are available from several Internet service providers.

²¹ Filing your OCR complaint within 60 days of your school's decision on your internal grievance is grounds for a "waiver" of the 180-day filing requirement. The grounds for a waiver are discussed in Question No. 29.

When and how do I file a complaint with the Department of Justice (DOJ)?

The Department of Justice is the federal agency that enforces Title III of the ADA. (See Question No. 1 for the definition of Title III.) If your school is covered by Title III and you want to file a discrimination complaint, you can find complete instructions here: <http://www.ada.gov/t3compfm.htm>, or write to:

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section- NYAVE
Washington, D.C. 20530

Complaints with DOJ can be filed at any time, although you should file your complaint as soon as possible. Although there is no timeline on filing Title III *complaints* with DOJ, there are timelines on *lawsuits* filed under Title III.²²

What if I file my complaint with the wrong department?

If you do not know what law covers your school, or if you file with the wrong department, don't worry. Your complaint will be forwarded to the proper department.

What if I file my OCR complaint late?

If you file your OCR complaint late, it will not be investigated unless you can get a waiver. OCR will respond to your late complaint by notifying you

²² Title III of the ADA is silent on the subject of statute of limitations with respect to private litigation. Where federal law, such as Title III, is silent, courts look to state law for guidance. 42 U.S.C. § 1988(a). Therefore, you would be wise to consult an attorney for advice on the applicable state law statutes of limitations, so that you do not miss your day in court because the statute of limitations ran out.

in writing that you may request a waiver. You can get a waiver of the 180-day filing requirement in the following five circumstances:

- A. You could not reasonably be expected to know that what happened to you was discriminatory within the 180-day period, and your complaint was filed within 60 days after you became aware that what happened to you was discriminatory;
- B. You could not file a complaint on time because you were ill or otherwise incapacitated during the 180-day period, and the complaint was filed within 60 days after your period of illness or incapacitation ended;
- C. You filed a complaint alleging the same discriminatory conduct within the 180-day period with another federal, state or local civil rights enforcement agency, and filed a complaint with OCR within 60 days after the other agency completed its investigation or notified you that it would take no further action;
- D. You filed an internal grievance with your school within the 180-day period, alleging the same discriminatory conduct that was the subject of the OCR complaint, and the complaint was filed no later than 60 days after the internal grievance was concluded; or
- E. You have been adversely affected by unique circumstances caused by agency action.

What should my complaint to the DOJ or OCR say?

If you are using the OCR complaint form (see link in Question No. 26), all you need to do is answer all the questions on that form and submit it or mail it in. If you are filing a complaint with the DOJ, or want to supplement the OCR complaint form with your own complaint letter to OCR, your complaint should give at least the following information:

- A. Your name, address and telephone number, as well as the name of anyone who helped you file the complaint;

- B. The name and address of your school, and the names of the individuals and/or school departments who you believe discriminated against you because of your disability;
- C. The reasons why you think you were discriminated against because of your disability, being as specific as possible;
- D. The dates when the discrimination happened;
- E. Whether you have filed an internal grievance with your school and, if you did, when you filed your grievance and what happened after you filed;
- F. Whether you have already filed a complaint with any other federal, state or local civil rights agency about the same acts of discrimination and, if you did, when you filed your complaint and what happened after you filed; and
- G. Whether you have already filed a lawsuit in any federal or state court about the same act(s) of discrimination, and if you did, when you filed your lawsuit, and what happened after you filed.

You should also send **copies** of any letters or documents that help show how you were discriminated against. Don't send originals, because you might not get them back!

Finally, make sure that you sign and date your complaint. Your complaint won't be accepted unless you have signed and dated it.

What happens after I file my complaint?

What happens with your complaint depends on what agency you filed your complaint with.

Filing a complaint with the Office for Civil Rights of the U.S. Department of Education (OCR)

- 1. Early Complaint Resolution
 - a) When you file a complaint with OCR, you have the

choice of asking for *Early Complaint Resolution*, or going ahead with an evaluation and/or investigation.

- b) Early Complaint Resolution lets you and your school attempt to resolve your complaint together. If you and the school are both willing to do Early Complaint Resolution, OCR will work with you to resolve your complaint. OCR will help you reach an agreement, but the agency will not take sides.
- c) OCR will not monitor your Early Complaint Resolution agreement. If your school does not do what they said they would do during Early Complaint Resolution, you should file another complaint with OCR.

2. Evaluation and Investigation

- a) If you and your school cannot resolve your complaint using Early Complaint Resolution, OCR will do an initial evaluation of your complaint. Be prepared for an OCR investigator to call you for more information or documentation.
- b) If the OCR investigator assigned to your case finds support for your complaint, she or he will do an investigation. The investigator may interview witnesses and ask for more information. The investigation will continue until one of the following happens:
 - i. OCR finds that there is no discrimination and your complaint is dismissed;
 - ii. You withdraw your complaint;
 - iii. Your complaint is resolved; or
 - iv. OCR gives your school an "agreement for corrective action," a written agreement that

says what your school must do to resolve your complaint. OCR will monitor this agreement to make sure that the school does what it is supposed to do to comply with the law.

3. Reconsideration or Appeal

You may file a request for reconsideration if you disagree with OCR's decision to dismiss your complaint, or an appeal if you disagree with OCR's determination in an investigative determination. Requests for reconsideration should be sent to the Director of the Enforcement Office that issued the determination. Appeals should be sent to the Deputy Assistant Secretary for Enforcement at the following address:

Deputy Assistant Secretary for Enforcement

Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-1100

In the request or appeal, you must explain why you believe that the factual information that OCR relied on was incomplete, OCR's analysis of the facts was incorrect and/or the appropriate legal standard was not applied. In addition, you must also explain how a correct application of the facts or law would change OCR's determination in your case. If you have supporting documentation, it must be submitted with the request or appeal. The decision of the Director of the Enforcement Office or the Deputy Assistant Secretary for Enforcement constitutes the agency's final decision on your complaint.

The deadline for filing a request for reconsideration or an appeal (including any supporting documentation) is

60 days following OCR's dismissal of the complaint. The Office Director or Assistant Secretary may exercise discretion in granting a waiver of the 60-day timeframe if it finds that: (1) you were unable to submit the request for reconsideration within the 60-day timeframe because of illness or other incapacitating circumstances, and your request or appeal was filed within 30 days after the period of illness or incapacitation ended; or (2) you have been adversely affected by unique circumstances generated by agency action.

Filing a complaint with the Department of Justice (DOJ)

1. Mediation

When you file a complaint with DOJ, you have the option of going to mediation. If you are interested in getting mediation through DOJ, you must ask for it in your complaint. For information on DOJ mediators in your area, contact the Key Bridge Foundation, the agency that supplies mediators for DOJ.

Key Bridge Foundation
5335 Wisconsin Ave. NW, Suite 440
Washington, DC 20015-2079
Telephone: (202) 274-1822
TTY/TDD: (800) 630-1415
Fax: (202) 274-1824

Email: pmaida@keybridge.org

Website: <http://www.keybridge.org/DOJ.htm>

Note that any agreement reached in mediation is binding, which means it can be enforced in court.

2. Evaluation and Investigation

If you or your school doesn't want to do mediation, DOJ will hold on to your complaint to evaluate and investigate your discrimination claims. If DOJ believes

that you were the victim of discrimination, they may choose to file a lawsuit on your behalf. Keep in mind however, that DOJ will not act as your private attorney and will not be able to get you money damages.

Can private mediation help me?

In a number of California cities, there are private mediation centers that can help you resolve disputes informally. Some of these centers may have experience with disability-related issues and discrimination. To find out if there is a mediation center near you that has experience with disability issues, call your local independent living center or check a local telephone directory. Private mediators should be able to help you regardless of the type of school that you attend.

Where should I file a lawsuit? Do I have to file it within a certain time frame?

From the moment you experience discrimination, you have the right to file a lawsuit in court. You do not have to file a grievance with your school or file a complaint with the OCR or DOJ to be able to file a lawsuit. For violations of the ADA and Section 504, you must file your lawsuit in a U.S. District court. Although you may represent yourself, it is usually best to have an attorney to represent you.

You must file a lawsuit under the ADA and Section 504 for discrimination by a school on the basis of disability within two years of the date of discrimination.

If OCR or DOJ says that I was not discriminated against, does that mean I may not file a lawsuit?

No. You may file a lawsuit regardless of what OCR or DOJ says.

Are there any federal laws that protect me from retaliation?

The ADA and Section 504 prohibit schools from retaliating against any person who exercises his or her rights under those laws. Pursuant to Title V of the ADA, unlawful retaliation includes any discrimination against a

student with a disability because the student opposed any act or practice unlawful under the ADA or because the person made a complaint of discrimination, testified or assisted in any way in the investigation or trial regarding a complaint of discrimination. The implementing regulations of Section 504 prohibit a private or public entity from retaliating against a person because that person has participated in any investigation or action to enforce the Act or regulations. 28 CFR § 36.206. If you are retaliated against, you can file a new complaint with OCR or DOJ that includes your allegations of retaliation.

I think I have been discriminated against by my college or university. Are there any state laws that protect me?

Yes. This manual focuses on federal law, but if you are attending a California college or university, there are additional protections. California Government Code Section 11135 prohibits discrimination on the basis of disability in programs receiving state funding, which would include all community colleges and state colleges and universities. California's Unruh Civil Rights Act (California Civil Code, Section 51) also prohibits discrimination based on disability by many public and private entities. In addition to the remedies available under other laws, minimum statutory damages are available for a violation.

How do I file a complaint for violations of California state law, and what are the relevant time lines?

California community colleges, California state universities, and the University of California system all have policies and procedures that are designed to address discrimination based on disability and to investigate and resolve complaints. In addition, the California Department of Fair Employment and Housing (DFEH) will accept complaints against public colleges and universities under the Unruh Act (California Civil Code, Section 51). Complaints at DFEH must be filed within one year of the incident. For more information, visit the DFEH website at www.dfeh.ca.gov.

California Community Colleges

There are 112 community colleges located throughout California. The Board of Governors established a process for filing discrimination complaints under both federal civil rights laws as well as state law, California Government Code, Section 11135. Check with your college's Disabled Students' Program for information and assistance in resolving the complaint informally, or for information about how to file a complaint that is specific to your campus. Formal complaints may be filed either with the local college or with the Chancellor's Office, and must be filed within one year of the incident or within one year of when the complainant knew or should have known the facts. An online complaint form can be found at <http://californiacommunitycolleges.cccco.edu/complaintsform.aspx>.

Complaints are first investigated at the local college and an administrative determination is made within 90 days. If the student is not satisfied with the determination, the student can appeal to the local Board of Trustees within 15 days. Once the Board of Trustees rules on the complaint or allows the administrative determination to become final, the student may also appeal to the Chancellor's Office within 30 days.

The Chancellor's Office will determine if there is reasonable cause to believe that a violation occurred. If so, an investigation will be commenced to determine if there is probable cause to believe a violation occurred. If probable cause is found, enforcement action can be taken.

California State Universities

There are 23 California State Universities (CSUs) located throughout the state. Pursuant to Executive Order 1045, a student or applicant may file a complaint related to discrimination, harassment or retaliation with the university employee designated to receive such complaints at that CSU campus. A copy of the timelines and a link to the complaint form can be found at <http://www.calstate.edu/eo/EO-1045.html>.

Check with your college's Disabled Students' Program for information and assistance in resolving the complaint informally or information about how to file a complaint that is specific to your campus. Within 10 working days of

receipt of the complaint, an intake interview will be conducted. Investigation of the complaint should be completed within 60 working days, and the student should be notified within an additional 10 working days. A student has 10 working days from receipt of the Formal Level I decision to file a written appeal with the Office of the Chancellor.

University of California System

There are 10 University of California campuses statewide. Each campus has established grievance procedures for students with complaints and allegations of disability-based discrimination. Information concerning the university's grievance procedures may be obtained from the campus ADA/Section 504 Compliance Officers. The general UC policies can be found on line at www.ucop.edu/ucophome/coordrev/ucpolicies/aos/toc.html.

Check with your college disabled students' program for information on or assistance in resolving the complaint informally or information on how to file a complaint that is specific to your campus.

How can I protect myself from discrimination by my school?

To protect yourself from discrimination, know your rights as described in this manual. Document and keep copies of everything related to your disability and education. Write down dates, times and names of people you speak to about accommodations for your disability. Keep copies of all letters you send and receive. If you are discriminated against, having this information will help you to resolve your complaint.

APPENDIX A: SAMPLE REQUEST FOR ACCOMMODATION

Date *(Don't forget to date your letter here!)*

(Find out who deals with accommodations requests at your school and address your letter to that person.)

Attention: Mr. Green, Director
Disabled Students Services Program
California University
Los Angeles, California 90210-4321

RE: Request for Reasonable Accommodations under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

Dear Mr. Green:

(First, explain why you are writing the letter.) Please consider this letter a request for reasonable accommodations under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. According to California University procedures, you are the person who handles these requests.

(Next, explain your disability.) I am a student with a learning disability. (Explain how your disability affects you at school and the accommodation you need.) Example: I am a student with a learning disability that substantially impairs my ability to process information. Because of my disability, I require extra time on exams.

(If your medical professional or someone else who knows about your disability supports your need for that accommodation, state who they are here.) My medical professional(s) have recommended that I get double time on all exams. (If you have gotten the accommodation you are asking for in the past, say so here.) This is the accommodation I have needed and received since I was in high school. (Next, describe any letters or documents you have attached in support of your request.) I have attached a letter from my medical professional in support of my request for

reasonable accommodation for my learning disability. If more information is needed please let me know as soon as possible.

(Finally, ask that your request be answered within a reasonable amount of time.) I ask that you respond to this request in writing within the next two weeks.

Sincerely,

(Don't forget to sign the letter and include your address and phone number!)

Joe Citizen
Student Class of 2020
P.O. Box 10029
California University
Los Angeles, CA 90210-4321
(213) 000-0000
citizenj@gigmail.com

APPENDIX B: SAMPLE MEDICAL PROFESSIONAL'S LETTER

(Don't forget to date your letter here!)

(Find out who is responsible for taking students' requests for accommodations. Your medical professional can address your support letter to that person. If you don't know who to address the letter to, just have your medical professional write, "To Whom It May Concern".)

Attention: Mr. Green, Director
Disabled Students Services Program
California University
Los Angeles, CA 90210-4321

RE: Joe Citizen's Request for Reasonable Accommodations in his Educational Program for his Disability.

Dear Mr. Green:

(First, say why you are writing.) The letter is submitted in support of Joe Citizen's request for reasonable accommodations for his learning disability.

(Next, describe your specialty, where you work and how long the student has been in your care.) I am a learning disability specialist. I have worked in that capacity at UCLA since 1994. Joe has been in my care since he was a high school student.

(Next, describe the student's disability in detail. Attach assessments where appropriate.) The extent and impact of Joe's learning disabilities are well documented. I tested Joe personally in 2014, and again in October of 2018. The level of Joe's impairment has remained consistent, and is significant. For a full discussion of Joe's testing results and diagnosis, please refer to my assessments, which I have attached for your convenience.

(Next, describe the student's impairment in detail, including how it impacts him/her in the educational setting.) Joe is significantly impaired

in his ability to process written information. It takes him twice as long as a non-learning disabled student to comprehend written materials.

(Next, describe the accommodation or action necessary to compensate for the student's impairment.) To compensate for this deficit, it is my recommendation that Joe receive double time on all written exams, regardless of format (i.e., essay or multiple choice). This accommodation is commonly provided to students with learning disabilities like Joe. Without this accommodation, it is my professional opinion that Joe will be denied equal access to his educational program.

Please feel free to contact me should you need further information in order to grant Joe's request.

Sincerely,

(Finally, sign your name, and state your address and phone number.)

Dr. Mary Expert, Ph.D.
Learning Disability Specialist
University Medical Center
Los Angeles, CA 90210-4321
(213) 444-4444

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.