



## **Legal Rights of Students with Disabilities in Post-Secondary Schools**

### **A Self-Advocacy Guide**

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Federal and state law can change at any time. If there is any question about the continued validity of any information in the handbook, contact the Arizona Center for Disability Law or an attorney in your community.

The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you require further information.

- This guide is available in alternative formats upon request.

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**TABLE OF CONTENTS**

A. Using This Instructional Guide ..... 1

B. Introduction ..... 2

C. Commonly-Asked Questions..... 3

    Question #1: What schools are covered by the ADA and Section 504? ..... 3

    Question #2: Who is protected by the ADA and Section 504?..... 3

    Question #3: Are testing services such as the Scholastic Aptitude Test (SAT), Graduate Record Exam (GRE), Law School Admissions Test (LSAT) and Medical School Admissions Test (MSAT) covered by these laws? ..... 5

    Question #4: Can the school ask pre-admission questions about an applicant's disability? .... 6

    Question #5: Do pre-admission tests violate the ADA or Section 504?..... 7

    Question #6: Must a school lower its admissions standards for students with disabilities?.... 9

    Question #7: Does a school have to provide accommodations to students?..... 10

    Question #8: Does a student with a disability who is requesting accommodation(s) need to provide documentation of the disability to the school?..... 11

    Question #9: What kind of documentation is needed to support a request for an accommodation?..... 12

    Question #10: Is a school required to provide the specific accommodation requested by the individual with a disability? ..... 13

    Question #11: Can certain classes or elements of a class be waived or substituted as an accommodation?..... 13

    Question #12: Must an institution provide tutoring for students with disabilities? ..... 14

    Question #13: Can a school require a student to pay for part of the cost of an accommodation? ..... 15

Question #14: Does it violate the ADA and Section 504 for a student to be denied admission into a specific class because the building where the class is held is not accessible? ..... 16

Question #15: Can a school stop providing accommodation(s) in a particular class if the student fails to regularly attend the class? ..... 17

Question #16: Do the ADA and Section 504 require schools to provide accommodations for non-academic classes such as physical education and athletic programs?..... 17

Question #17: Do the ADA and Section 504 require schools to provide accommodations in areas such as the student union, cafeterias, and housing? ..... 18

Question #18: Is the school required to provide devices or services for a student's home use? ..... 19

Question #19: Can a school deny a student's admission to a specific program because of safety concerns? ..... 19

## **A. Using This Instructional Guide**

1. This guide was developed to assist individuals with disabilities in understanding their legal rights in postsecondary educational programs. Postsecondary educational facilities include colleges, universities, vocational, trade and technical schools.
2. This guide is divided into two sections. The first section offers an introduction to the laws that prohibit discrimination of students with disabilities in postsecondary programs. The second section provides answers to commonly-asked questions about students' rights. This guide is to be used with an action guide that provides self-advocacy strategies, form and sample letters, and resources for resolving problems in postsecondary programs. There are two action guides: One for students in publicly-funded schools and the other for those attending private schools. If you would like an action guide, call the Center to request a copy.
3. Throughout the guide, there are citations to the location of laws. Generally, it is not necessary for students to be familiar with these specific citations or to obtain copies of the law. These citations are included if the student needs to provide the postsecondary institution with the legal authority for the request. These citations would also be helpful to a private attorney who represents a person with a disability. The following is a list of abbreviations used in the citations:

CFR	=	Code of Federal Regulations
USC	=	United States Code
DOE	=	Department of Education
OCR	=	Office of Civil Rights
ADA	=	Americans with Disabilities Act

## **B. Introduction**

This guide focuses on the legal rights of individuals with disabilities applying to or attending postsecondary educational facilities.

There are two federal laws which prohibit discrimination against individuals with disabilities: Section 504 of the Rehabilitation Act of 1973 ("Section 504") and the Americans with Disabilities Act ("ADA"). Section 504 applies if the school receives federal financial assistance. Title II of the ADA applies if the school is operated by the state, county, or a political subdivision of the state, county, or city, such as a community college district. Title III of the ADA applies to all private schools except those operated by religious groups. If a postsecondary school receives federal financial assistance and is operated by a state or local government, then both Section 504 and Title II of the ADA apply to the institution.

Section 504 of the Rehabilitation Act of 1973 provides:

*No otherwise qualified individual with a disability . . . 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 . . .* 29 U.S.C. § 794(a).

Title II of the ADA which covers state-funded postsecondary institutions provides:

*No qualified individual with a disability . . . shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity . . .* 42 U.S.C. § 12132 (Supp. V).

This guide is not a substitute for legal advice. The Arizona Center for Disability Law recommends that persons obtain legal advice to resolve a legal dispute regarding discrimination on the basis of a disability. This guide and the action guides are meant to provide people with disabilities with information, examples about protections, and self-advocacy strategies.

The Arizona Center for Disability Law is a non-profit, public interest law firm providing free advocacy, information and referral services, legal research, community legal education, and, in selected cases, legal representation to individuals with disabilities and advocacy organizations

throughout Arizona. The Center is the designated protection and advocacy (P&A) system providing services for Arizonans with a wide range of physical and mental disabilities. Assistance is provided for disability-related issues in established priority areas.

Information about the eligibility requirements and priorities are available from the Center upon request. Assistance is provided according to program eligibility requirements, priorities and staff availability.

### **C. Commonly-Asked Questions**

#### **Question #1: What schools are covered by the ADA and Section 504?**

**Answer:** Federally-funded schools are covered by Section 504. Other publicly-funded schools are covered under Title II of the ADA. Privately-funded institutions are covered under Title III of the ADA. However, institutions that are controlled by religious groups, such as a private Catholic college, are not covered under Title III of the ADA. If a school receives both federal and state funding, then it would be covered under both Section 504 and Title II of the ADA. Universities, colleges, trade schools, vocational schools, technical programs, business colleges, and medical training programs are covered by one or more of these federal laws prohibiting discrimination.

Examples of schools covered by one of these anti-discrimination laws: University of Arizona, Arizona State University, Northern Arizona University, Yavapai Community College, Pima Community College, Mesa Community College, American Bartender School, Pima Medical Institute, Interstate Career College, Arizona Institute of Interior Design, Arizona Institute of Business and Technology, Brodsky School of Real Estate, ITT Technical Institute, Job Corp, and HDS Truck Driving Institute. This is not a complete list. There are many other schools covered by these laws.

#### **Question #2: Who is protected by the ADA and Section 504?**

**Answer:** A qualified individual with a disability. To be eligible for protection under these laws, a person must meet the definition of an individual with a disability and be qualified for the school program. An individual with a disability is defined by the ADA and Section 504 as a person who:

- (1) has an actual disability<sup>1</sup> (which means a physical or mental impairment that substantially limits at least one major life activity, including learning);

Joan has cerebral palsy which affects her speech, requires her to use a wheelchair, and limits the use of her arms because of the difficulty of controlling movement. She has an actual disability because she has a physical condition that poses substantial limitations. John also has cerebral palsy which only affects his left side causing him to drag his left foot. His speech is unaffected. He is right-handed and his left hand can be used to assist him in two-handed activities. Although he has the same condition, he would probably not be considered as an individual with a disability under these laws.

Sarah has severe dyslexia. She requested taped texts and oral tests as an accommodation for her disability. She provided appropriate documentation from a psychologist that stated that her disability substantially limited her learning capabilities and recommended that she be provided these accommodations. Since the student's disability substantially interferes with learning and reading, the University agreed to provide the accommodations.

- (2) has a record or history of a disability; or

Lacy has a history of drug addiction, but she successfully completed drug rehabilitation eight years ago and is not currently using drugs. She is denied admission to pharmacy school when she discloses her past drug addiction. She is being discriminated against because of a record of a disability.<sup>2</sup>

- (3) is perceived as having a disability.

Joseph is a student at Medical Careers, Inc., a private college, studying to be a laboratory technician. His instructor knows that he is gay and tries to terminate Joseph from the program because he believes he must be HIV-positive. Joseph is not HIV-positive, but he is terminated from the program. He is being discriminated against because he is perceived to have a disability.

An individual is qualified if s/he can meet the eligibility requirements that are essential to

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<sup>1</sup>Some conditions are specifically excluded from coverage under the ADA and Section 504. Those conditions include some sexual conditions and disorders, compulsive gambling, kleptomania, pyromania, and persons currently illegally using drugs. Temporary conditions, such as pregnancy, are not covered under the ADA. (Pregnancy discrimination is prohibited by the Pregnancy Discrimination Act, which amended the Civil Rights Act.)

<sup>2</sup>Although a person who is currently illegally using drugs is **not** covered by the ADA, persons who are in drug rehabilitation or have successfully completed a drug rehabilitation program are covered. Persons who have a history of drug addiction are protected.

the program.

In addition to having a disability, the individual must also be qualified for the program or the school. Under Section 504, in order to be considered qualified for the program, the person with the disability must be able to meet the academic and technical requirements for admission or participation in the school's educational program or activity either with or without reasonable accommodations. Under the ADA, a qualified person with a disability must be able to fulfill the essential functions or requirements of the program either with or without reasonable accommodation.

Joshua is legally blind. His low vision prevents him from performing certain clinical requirements (even with accommodations) of the optometry program at Public University (PU). Therefore, he is not otherwise qualified for the program if those clinical elements of the program are determined to be core elements to the program.

Alberta is studying to become a physician's assistant at Ponderosa Career College. She has a permanent injury to her back that prevents her from lifting more than 30 pounds. Periodically during the clinical programs, students are required to transfer patients from wheelchairs and help carry them to their beds. The student requests that she be exempted from this requirement due to her disability or, that when a patient requires this assistance, Alberta be allowed to request help from another student. Lifting a patient would probably not be considered an essential function or core element of the physician's assistant program and could probably be waived as part of a reasonable accommodation for that student.

**Question #3: Are testing services such as the Scholastic Aptitude Test (SAT), Graduate Record Exam (GRE), Law School Admissions Test (LSAT) and Medical School Admissions Test (MSAT) covered by these laws?**

**Answer:** Yes. Title III of the ADA applies to pre-admission tests given by private entities such as the ones mentioned above. The testing centers must also provide reasonable accommodations to students taking these exams. There are procedures set up by each testing entity for accommodating applicants when an individual requests an accommodation. An individual should follow those procedures to request an accommodation. Currently, the laws do not prohibit the testing centers from noting on the exam results that the test was taken under special (non-standard) conditions. The ADA and Section 504 do prohibit schools receiving the

test reports from devaluing or giving different weight to scores achieved on standardized tests taken under non-standard conditions.

**Question #4: Can the school ask pre-admission questions about an applicant's disability?**

**Answer:** No. Under Section 504, the facility may **not** make pre-admission inquiries about whether an applicant has a disability. Following admission, a school may make inquiries about a disability for limited reasons, such as to assess whether an accommodation is required. While the ADA and its regulations do not specifically address pre-admission inquiries, the schools covered only by the ADA would probably be required to follow this same rule.

A school's admission form asked if applicants had "any disability or handicap" and provided a place to check "yes" or "no". A list of disabilities with code numbers followed and applicants were requested to enter the appropriate code(s). The form stated that the responses were voluntary, were used to comply with federal reporting, and had no effect on admission to the school. The Department of Education - Office of Civil Rights, the agency in charge of enforcing and investigating charges of discrimination, held that the pre-admission inquiries were in violation of federal regulations. *5 Nat'l Disab. Law Reporter ¶ 36 (Dec. 16, 1993).*

Job Opportunities for All (JOFA) receives federal funds that offer GED preparation courses and vocational courses to youth 18 - 24 years old. JOFA had a section on the application requesting information about medications taken by the applicant. Paul answered that he was prescribed Haldol. Suspecting a mental illness, before granting admission, the program asked for additional information about the reasons the medication was prescribed. The first question and follow-up request for information are illegal pre-admission inquiries.

An applicant may choose to voluntarily disclose that s/he has a disability and request that the disability be considered in the application process.

Jorge applied to enter a Master's level counseling program at Park College, a private graduate school. The graduate school prefers candidates who have at least a 3.0 (on a 4.0 scale) during their undergraduate program. Jorge has a 2.7 GPA. During college, he had an accident causing a spinal cord injury which required numerous surgeries and therapy. He uses a wheelchair. He believes undergoing treatment lowered his grades, but he feels that positively dealing with his disability will be an asset to his success as a counselor. Jorge can choose to discuss his disability in the personal statement he must provide to the program.

A school may ask questions regarding an individual's disability if that individual is applying for a college or university program operated specifically for a person with a disability. If an applicant wants to be considered for that specific program, the school may ask pre-admission questions regarding disability to determine if s/he is eligible for admission into the special program.

The University of Arizona has a program called Strategic Alternative Learning Techniques (SALT) for persons with learning disabilities. The University would be allowed to ask questions regarding the type of disability an applicant to the SALT program has in order to determine if that person would be eligible for admission.

### **Question #5: Do pre-admission tests violate the ADA or Section 504?**

**Answer:** No. However, to be permitted under the federal laws, admission tests must be given in a non-discriminatory manner and reasonable accommodations must be provided when needed by a student with a disability to have an equal educational opportunity.<sup>3</sup> The purpose of the tests must be to measure the applicant's aptitude or achievement level, not the level of his/her impairments. Though pre-admission tests are not specifically addressed in Title II and III of the ADA, the principles in Section 504 are the same as those in the ADA. Tests given by a school covered only by Title II or Title III of the ADA should follow these same guidelines for handling pre-admission testing.

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<sup>3</sup>Accommodations that would cause an *undue burden or hardship* to the school would not be required by Section 504 or Title II of the ADA. Accommodations that would *fundamentally alter the operations* would not be required for a school covered by Title III of the ADA.

Section 504 provides the following:

1. Exams designed for persons with impaired sensory, manual, or speaking skills are offered at equally convenient locations, as often and as timely as are other examinations;
2. The examination is administered in facilities that are accessible to individuals with disabilities or alternative accessible arrangements are made for those who need an accessible facility. Alternate accessible arrangements may include taking the exam at the home of the person with a disability with a proctor, if accessible facilities or equipment are unavailable.

Ana has multiple sclerosis and uses a wheelchair. She is registered to take the Graduate Record Exam (GRE), but she knows that the exam location is not wheelchair accessible. Ana calls the GRE office and requests that the test be offered at a different location. Under Title III of the ADA, the office must make other arrangements for her so that she may take the exam when she signed up for it.

3. Required modifications to an examination may include changes in the length of time permitted for completion of the exam and adaptation of the manner in which the exam is given.

Morgan has a traumatic brain injury. This makes it more difficult for him to concentrate on pen and paper tasks. He requests an additional hour to take a written exam at the school he hopes to attend. This would be a reasonable accommodation for the individual and the Chef Boyardee School of Culinary Arts should allow this modification.

David has a speech impairment that includes stuttering. He has requested that an exam be given to him in a written rather than oral format. As long as changing the oral exam into a written format would not fundamentally alter the measurement of the skills or knowledge the exam is intended to test, or result in an undue burden, then it should be provided for David.

4. If a private entity is proctoring the examination, they shall provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills unless the facility can show that this would fundamentally alter the measurement of skills or knowledge that the test is measuring - or that it would result in an undue burden. Some aids that may be provided are: taped examinations, interpreters, braille or large print examinations, and answer sheets or qualified readers and transcribers.

Bruce is deaf. He registers for the test to become a certified mechanic and requests an interpreter for the certification exam. The private testing institution that administers the certification exam would be covered under the ADA and required to provide Bruce with a qualified sign language interpreter for the exam.

**Question #6: Must a school lower its admissions standards for students with disabilities?**

**Answer:** No. The applicant with the disability must be qualified for the school or program. If the applicant is qualified and meets the eligibility criteria with or without reasonable accommodations, the student may not be denied admission based upon their disability.

Patricia has a history of schizophrenia. She applied to the Graduate Business College with an undergraduate GPA of 2.0 and a GRE score that ranked in the 10th percentile. She believes that the cycles, treatment, and management of the schizophrenia caused her to fall behind in school resulting in lower grades. The GPA's of the admitted students ranged from 3.5 to 4.0 and the GRE scores were all above the 75th percentile. The school would probably not be found in violation of the law if they used these criteria to deny the individual's admittance to the College since the applicant did not meet the school's admission criteria.<sup>4</sup>

A nursing student who was deaf was denied admission into a college clinical training program because of her disability. The student brought an action under Section 504 alleging illegal discrimination. The United States Supreme Court held that the nursing student was not an "otherwise qualified person" eligible for accommodation under the act because she would not be able to meet all of the program requirements. In this case, the university was not required to provide admission into its clinical program because such an accommodation would "result in a substantial modification to the existing program". **The court held that Davis, the nursing student, was not qualified for the program because "nothing less than close, individual attention by the nursing instructor would be sufficient to ensure patient safety if [Davis] took part in the clinical portion of the nursing program (442 US at 409.)** The court determined that the University would need to lower the standards of its clinical program in order to accommodate her disability. *S.E. Community College v. Davis* 442 US 397 (1979 ).<sup>5</sup>

<sup>4</sup>If a school can show that the applicant's academic record is substantially weaker than those of admitted students, the OCR will likely reject a claim of discrimination.

<sup>5</sup>This case is considered by many disability law advocates to be an unfair decision that is not consistent with the purposes of these anti-discrimination laws. If an individual is faced with a similar situation as presented in this case, it may be advisable for the student to take an active role to provide his/her own

A carpentry apprentice program has a written admission test for all prospective students. A student with a learning disability requests that the admission test be waived or that an oral test be given instead. The student meets all other criteria for admission (i.e., G.E.D or High School Diploma). The apprenticeship program should provide this accommodation unless it can show that the test measures a reading level which is required for carpentry.

**Question #7: Does a school have to provide accommodations to students?**

**Answer:** If the person is a qualified individual with a disability, then the school is required to provide disability-related accommodations to that person, when necessary. There is a limit to this requirement. The school may deny the accommodation if it would cause an undue burden or hardship to the school or program.

Reasonable accommodations vary depending upon the unique situation of each individual. Some examples of reasonable accommodation include the provision of auxiliary aids and services, changing the location of a class or exam to allow students with physical disabilities or chemical sensitivities access to the classroom, or allowing persons with learning disabilities extra time to complete examinations.

Postsecondary education facilities are required to provide auxiliary aids and services, where necessary, to ensure that no individual with a disability is excluded or treated differently. Auxiliary aids and services include, but are not limited to:

- qualified interpreters or other effective methods of making spoken information available to individuals with hearing impairments;
- qualified readers, taped texts, or other effective methods of making visual materials available to individuals with visual impairments, such as large print or braille versions;
- acquisition or modification of equipment or devices; and
- other similar services and actions.

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accommodation for the program (for example, offering to pay for a portion of the accommodation) to assist him/her in succeeding in a program like this without the necessity of challenging the school in court. Under current law, with a similar fact scenario, a school would not be in violation of Section 504 or the ADA if it refused to accommodate a student under these circumstances.

See the Appendix in either Action Guide for other examples of auxiliary aids and services.

A private school open to the public is not required to provide an auxiliary aid or service if it would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations.

Ben is taking classes at Kneck Payne School to become a chiropractic assistant. He is HIV-positive and is taking a new medication which has caused an adverse reaction. As a result, he needed a short hospitalization to regulate the medications. He called the school to explain his absences since there is a strict attendance policy. The school administrator tried to terminate him from the program because of his absences. Relaxing the attendance policy under these circumstances may be required as an accommodation under the law.

Maria has Lupus. She applied to Justice University Law School and was accepted. After the first semester, it became more difficult for Maria to manage the Lupus due to stress caused by the full class load. Maria provided appropriate documentation from a specialist requesting the accommodation of a reduced class load for the spring semester. The school had a policy allowing single-parent students to take a reduced load but did not provide this option for other students. Since the school provides this program for non-disabled students, the school would not be able to effectively argue that this accommodation would be an undue hardship on their program or that attending school full time is an essential element of the law program. The law school should provide the reduced course load to comply with Section 504 and the ADA.

**Question #8: Does a student with a disability who is requesting accommodation(s) need to provide documentation of the disability to the school?**

**Answer:** Yes. Both Section 504 and the ADA make it the applicant's responsibility to provide the school documentation of his/her disability. Once a student is admitted, it is the student's responsibility to notify the school of his/her disability, request academic adjustments, and provide any supporting documentation of a disability requiring accommodation. See 34 C.F.R. § 104.44 (1995). Unlike the rights of students with disabilities in elementary and secondary students, the school is not obligated to provide or pay for the evaluation.

**Question #9: What kind of documentation is needed to support a request for an accommodation?**

**Answer:** The documentation should be **fairly recent**, from an approved expert in the area of the disability, and it must be **sufficiently comprehensive**. **Fairly recent** usually means within the last three years. For example, documentation about a learning disability or attention-deficit disorder should be in the last three years. Documentation about legal blindness could probably be obtained more than three years ago. **Sufficiently comprehensive** means that it must identify the testing mechanisms, testing procedures and findings.

It is also required that a student provide the school with **timely** notice of the disability and request for accommodation. Unlike special education laws that cover elementary and secondary schools, it is not the school's or college's duty to identify a student's disability and determine the proper accommodation(s). Many schools will have a disability coordinator who can inform students how to request accommodations and guidelines for how early to request accommodations. If, after notifying the school of the disability and the requested accommodation, the student feels that additional accommodation(s) are necessary, it is the student's responsibility to request the additional accommodations from the school.

A doctoral student with a heart condition did not request accommodations prior to the administration of her course exams and had chosen to take the examination rather than pursue the acceptable alternative of completing coursework. The student suggested an alternative method of evaluation after she had failed the exam. The OCR found no evidence of discrimination by the school when it dismissed her after she failed the required examination three times. *University of Pennsylvania, 1 Nat'l Disab. L. Rep., ¶ 323 (Feb. 8, 1991).*

In addition to providing documentation of a specific disability, the school may require documentation to support the student's request for a particular kind of academic adjustment.

Jesse informed a school that he needed essay exams instead of multiple choice exams due to his learning disability. The student provided documentation of his disability, but neither the psychologist who performed the evaluation nor a trained vocational rehabilitation counselor felt that essay exams were necessary because of his disability. It would be unlikely that the school would be found to have discriminated against Jesse if it refused to provide essay exams because Jesse did not provide documentation supporting his specific request.

**Question #10: Is a school required to provide the specific accommodation requested by the individual with a disability?**

**Answer:** The law does not require that the school provide the exact accommodation requested by the student. However, schools must provide effective accommodations that offer students an equal educational opportunity. In determining the accommodation, the school should consider the preferences of the student with a disability. However, if there are several accommodations, all of which are effective, the school may legally select the least costly, effective accommodation even if it is not the student's first choice. Students with disabilities must have equal opportunities and receive the same benefits and services as non-disabled students.

Belinda, who has severe arthritis and uses a wheelchair, is enrolled in a class that is physically inaccessible. Instead of moving the class to an accessible building, the school puts a TV monitor into an accessible room and Belinda is informed that she will be able to watch the lecture and take all exams from this room. This would **not** be an effective accommodation for the student. This "accommodation" segregates the student with the disability from non-disabled students without providing the same benefits and learning environment. In this situation, the student would be unable to join in class discussions or ask questions during the class period.

**Question #11: Can certain classes or elements of a class be waived or substituted as an accommodation?**

**Answer:** Students may request as an accommodation that certain classes be waived from a degree requirement if the student can show the required documentation for this type of accommodation. This is not a guaranteed accommodation even if documentation is provided. The Office of Civil Rights ("OCR") has held that federal law does not require a college to waive required courses where the school can show that the course is essential to the degree program. This rule would also apply to a request to waive certain elements of a class such as term papers or presentations.

A visually impaired student requested that a term paper be eliminated as a requirement for a library skills course. The school refused this accommodation but did eliminate three of nine weekly assignments and notified the student that additional time would be granted for him to complete the term paper. This course focused on research principles and techniques, basic reference sources and instruction in preparing research papers. Because the paper was an essential element in the course and because the instructor provided alternative accommodations to the student, OCR did not find any discrimination against the student. *Griffin College (WA) 2 NDLR @ 187 (October 10, 1991).*

An accounting student at Moneys R Us School of Accounting has a learning disability that makes it difficult for that student to learn foreign languages. The student requests that the foreign language requirement in her Accounting program be waived and another elective substituted. Unless the school could show that a foreign language requirement is essential as part of its program, then the student should be allowed to waive and substitute another class as a reasonable accommodation. In contrast, if the student's degree was in International Business, the language requirement would likely be an essential part of the degree program and would not be subject to waiver as an accommodation.

**Question #12: Must an institution provide tutoring for students with disabilities?**

**Answer:** Under the ADA and Section 504, a school must provide tutoring to students with disabilities to the same extent as it does for non-disabled students. Many schools have tutoring programs to help students succeed in college. Oftentimes, these tutoring programs are free. For example, some schools might offer up to 5 hours of tutoring or offer tutoring for all lower division Math, English, and Science courses. If so, students with disabilities would need to also be matched with tutors. In some cases, the school will need to provide accommodations to allow students with disabilities to participate in the school's tutoring program, such as providing an interpreter and tutor for a student who is deaf.

The OCR has taken the position that a school is not generally required to provide a tutor as an accommodation for a student with a disability because OCR views tutoring as assistance of a personal nature which is not required. However, a school may voluntarily offer tutoring as an accommodation for a student with a disability. However, refusing to provide a tutor for

additional personal study will probably not be considered a violation of these laws, unless other non-disabled students are offered tutoring.

Northern Arizona University did not violate Section 504 and the ADA when it provided a student with a learning disability test accommodations, use of computer labs, a disability specialist to help identify learning strategies, and a coordinator to consult with the math teacher. NAU had refused to provide a private math tutor in this advanced math class because it did not have qualified tutors for upper-division math classes. *Northern Arizona University, 5 NDLR, ¶ 284 (OCR, 1994).*

Mary attends a cosmetology school. She chose the school because the program's brochure and the admission director said that students may be provided a tutor for up to 5 hours per week. Once enrolled, Mary was refused a tutor because the tutors did not know how to tutor her because of her learning disability. The school refused to talk to her high school LD specialist or otherwise consult with a specialist to develop appropriate tutoring strategies. The school would be in violation of Section 504 and the ADA.

**Question #13: Can a school require a student to pay for part of the cost of an accommodation?**

**Answer:** No. Students with disabilities may not be required to bear the costs of accommodations that are necessary to allow them to participate in a school's educational programs or activities. However, the school is not required to pay for accommodations during the student's personal time.

A student with juvenile arthritis needs an assistant to take notes during class. The school would be required to pay for her notetaker during classroom hours, but would not be required to pay for an assistant during the student's own time - such as lunch breaks or after class study.

A school would most likely be required to pay for an accommodation that was needed by a student on a school/class sponsored activity.

An astronomy class at Reach for the Stars University has scheduled a field trip to a planetarium. The trip is not a required element of the class but the instructor told the students that it would be beneficial in their understanding of the material and course study. The school refused to pay for a sign language interpreter for Beto, who is deaf, to attend this trip to the planetarium claiming that the trip was not a required element of the class. In this situation, the school must provide the accommodation. Although the trip was not required by the instructor, it was recommended that students attend and it was beneficial to their understanding of the material. It could be argued that the student was being denied the same benefits as the non-disabled students if the school fails to accommodate him.

A group of astronomy students decide to study at the local planetarium. The instructor is not involved in their planning. Only some of the students in the class are attending. If Beto decides to attend this study session, he would need to pay for his own interpreter during this trip. This trip would be considered to be on the student's personal time and the school would not be required to pay for the accommodation.

**Question #14: Does it violate the ADA and Section 504 for a student to be denied admission into a specific class because the building where the class is held is not accessible?**

**Answer:** Yes and no. Section 504 provides that students with disabilities cannot be excluded from participation in a program because the classroom/facilities are inaccessible or unusable by persons with disabilities. See 34 C.F.R. § 104.21. The requirements for accessibility do depend upon when the building was constructed. If the building was constructed before June 3, 1977, then the institutions are required to provide programs or activities that are readily accessible to students with disabilities. This does not require that each and every class is accessible every time that it is offered. Rather, when all of the class offerings are viewed together, the student must not be denied the opportunity to take that class.

For example, the university may offer three sections of the class, but not all three sections must be offered in buildings accessible to students with disabilities. However, at least one must be accessible.

Buildings and facilities constructed after June 3, 1977, must be made readily accessible and any alterations to facilities built before the effective date must be made so that they are

accessible to the maximum extent feasible. See 34 C.F.R. § 104.21.

**Question #15: Can a school stop providing accommodation(s) in a particular class if the student fails to regularly attend the class?**

**Answer:** Probably. Case law has indicated that a school would be relieved of its duty to provide a specific accommodation to a student who had repeated absences and late cancellations. Many times, accommodations such as interpreters are costly to a school. When a student fails to attend classes, without good cause for the absences, the school may suspend the accommodation. The school must provide an exception to this rule, allowing an excuse for unexpected circumstances and a procedure allowing the student to timely notify the school of a planned absence so that the school could cancel the accommodation for that specific day. The student has a responsibility to attend classes regularly where accommodations are being provided. When absences are expected, the student also has an obligation to notify the school of the absences in advance. A school may not suspend an accommodation because of a few unplanned absences.

**Question #16: Do the ADA and Section 504 require schools to provide accommodations for non-academic classes such as physical education and athletic programs?**

**Answer:** Yes. Institutions are required to provide reasonable accommodations for nonacademic programs such as physical education programs and athletics. Students with disabilities must be allowed the opportunity to participate in physical education programs. The regulations provide that, generally, all students are presumed qualified to participate in regular physical education programs. See 34 C.F.R. §§ 104.47 (a) and 104.4 (b). Other nonacademic programs covered under Section 504 and the ADA would include research, occupational training, health insurance, counseling, financial aid, recreational programs, transportation or other extracurricular activities offered by the institution to students.

Sharon is a full-time student taking teleteaching classes. She has multiple chemical sensitivity. She attends Desert Community College. The College offers short-term counseling services for all students. The counseling center is located next to the student laundromat and Sharon's condition is aggravated when she is in the building. She asks her counselor to meet her in a private study room at the campus library instead of the counseling center. This would be a reasonable accommodation the school could provide.

**Question #17: Do the ADA and Section 504 require schools to provide accommodations in areas such as the student union, cafeterias, and housing?**

**Answer:** Yes. The laws provide minimum standards of accommodation for postsecondary institutions in six areas: (1) admissions and recruitment; (2) treatment of students; (3) academic adjustments, including the provision of auxiliary aids and services; (4) housing; (5) financial aid and employment assistance; and (6) nonacademic services. If the school provides housing to its students, then students with disabilities must be offered comparable, convenient, and accessible housing at the same costs as the housing offered to non-disabled students. See 34 C.F.R. § 104.45 (1995).

A federally-funded university housing program accommodated all non-disabled students in their housing requests but was unable to accommodate 3 of the 20 requests for housing by mobility-impaired persons. However, the school was able to provide housing to all non-disabled students. Under these circumstances, their inability to provide appropriate housing to mobility-impaired persons might violate Section 504.

A school's counseling service directed students with disabilities to a limited number of career options claiming it was in the student's best interest and that many other careers would create too many obstacles for the student with a disability. This action by the career services center was in violation of the Department of Education's regulations that provide that all career services and academic advisors are not allowed to counsel students with disabilities into more restrictive career paths. Advisors are allowed to provide factual information about the licensing and certification requirements of certain careers that may cause difficulties/barriers for people with disabilities. See Chapter 9 of the Post Secondary Education Supplement 7 - 3/95 section 9:25.

**Question #18: Is the school required to provide devices or services for a student's home use?**

**Answer:** No. Devices or services of a personal nature need not be provided by the institution. For example, a student who needs a reader for personal use to prepare for class would not be entitled to have the school pay for the reader. However, if personal services or devices are made available to all students, they must be provided to afford an equal opportunity to students with disabilities.

A visually impaired student needs access to a computer with a voice output software program. The University of Tucson provides a computer lab for use by all students. Within the lab there are 30 computers, of which only 2 are equipped with the voice output software. Each student is allowed 3 hours at a time for computer use, except the voice output system computers are limited to 1 hour sessions due to the high demand. This practice would be discriminatory against individuals with disabilities because they are not receiving the same benefits as non-disabled students. Since the school decided to provide computers for students' personal use, they must provide them equally to disabled and non-disabled students. The school should purchase additional software to equip enough computers to permit use for 3 hours at a time.

The school library is open until 11 p.m. daily. The school provides "readers" for students with disabilities in a soundproof room within the main library. This room closes daily at 9 p.m. This would be discriminatory because the library is limiting access to the readers while affording greater access to the library for non-disabled students.

The University of Yuma provides free tutoring for all incoming freshmen in all English 101 classes. A student who is deaf requests a tutor who knows sign language and the school refuses to provide the tutor. Normally a school would not be required to provide accommodations such as tutors for the students with disabilities but since it chooses to provide this service to non-disabled students, it must also provide the accommodation equally to students with disabilities.

**Question #19: Can a school deny a student's admission to a specific program because of safety concerns?**

**Answer:** Yes. Safety concerns may be a legitimate, non-discriminatory reason to deny admission to a program. However, if accommodations or adjustments could be made to eliminate

those safety concerns, then the student should be admitted to the program provided he/she meets the admission requirements.

The ADA requires schools to be prepared to show the following when claiming a "direct safety threat":

- ***the specific risk must be identified;***
- ***it must be a current risk, not one that is speculative or remote;***
- ***the assessment risk must be based on objective medical or other factual evidence regarding a particular individual; and***

An individual applies to a truck driving school and provides the school with documentation stating that he is currently suffering from depression and is taking medication to control his disability. The doctor's report states that the individual's medication will not cause drowsiness or otherwise affect his ability to operate a motor vehicle. The school's admissions director believes that anti-depressant medications cause moodiness and drowsiness and, based upon her beliefs, denies the individual admission into the program. Since the decision was based on personal belief and not medical documentation, the school would be discriminating against this individual.

- ***even if a genuine significant risk of substantial harm exists, the school must consider whether the risk can be eliminated or reduced below the level of a "direct threat" by reasonable accommodation.***

A nursing school applicant has a learning disability that causes him to transpose numbers. This disability raises a safety concern that the student would be unable to accurately enter or follow information about medications on a patient's chart, thus endangering the life of the patient. If accommodations or adjustments could be made to eliminate those safety concerns, such as allowing the student to dictate notes into a tape to be transcribed by a secretary, then the student could be admitted to the program. If reasonable accommodations were not possible, the school could raise safety concerns as a reason not to admit the student. *Tucker and Goldstein on Postsecondary Education 9:31 Supplement 7 (3/95).*

If you are having problems in gaining admission, obtaining a necessary accommodation, getting approval for a waiver of a class/course requirement, or otherwise denied an equal opportunity to participate in the programs and activities of the school, you may request an action guide from the Center. When you make your request, indicate whether you are attending a private or public school.