

ADA & Postsecondary Education

Title II

Title II of the Americans with Disabilities Act addresses the right of access to public services by individuals with disabilities. According to the *Americans with Disabilities Act Handbook* (U.S. Department of Justice, 1991), the purpose of Title II is to "prohibit discrimination on the basis of handicap in all services, programs, and activities provided or made available by local or state governments and their affiliate agencies", regardless of whether they receive federal funding. While many public services are covered under ADA Title II (see the [ADA General Information Page](#) for further discussion), the right of equal access to post-secondary education settings is one of the most important. Here, we highlight several of the key points mentioned in Title II of the ADA that relate specifically to the rights of students with disabilities in college, university, or technical school settings.

ADA Title II Applies To:

- Public Schools and Universities
- State and Local Governments
- Federal Government (Legislative and Judicial Branches only)
- Private Employers
- Employment Agencies
- Labor Unions
- All other settings except those mentioned below.

Individuals with Disabilities Must Be Qualified:

Title II of the ADA protects individuals with disabilities from being denied the opportunity of participating in post-secondary educational activities. However, it does not require universities to accept or accommodate everyone who has disabilities. Under the ADA, college applicants with disabilities must **first**:

- Satisfy the standards required by the university or college for all students.
- Be able to perform the "essential course activities" with or without "reasonable accommodations" (see below).

Essential Course Activities" Explained:

- **Tasks that are fundamental and necessary to complete the course:** e.g., completing daily reading assignments, either independently or using an acceptable accommodation (e.g., books on tape).
- **Does not include incidental duties:** e.g., providing snacks for the class.
- **Amount of time spent on a specific task or duty:** e.g., completing a paper by the expected due date listed on the syllabus. Instructors may accommodate students with disabilities by allowing them to use alternative testing procedures and formats for their assignments (e.g., for a student with a speech impairment, writing a paper rather than giving a presentation); however, students with disabilities can be held to the same work standards as their non-disabled peers (e.g., meeting assignment deadlines, etc.). These are not the only allowable accommodations under the law.
- **What the instructor believes to be an essential course activity:** e.g., subscribing to a class

email listserv and checking it regularly. The instructor can set his/her own class requirements as long as these can be verified as important (e.g., the student must have access to email because the large number of students in the class prohibit the instructor from photocopying all handouts, so email document attachments are used to disseminate this information instead).

- **Course requirements performed by past and current students in the course:** e.g., using specific computer software, etc. However, instances where past students have expanded their class participation (i.e., gone beyond what the syllabus requires) are not considered "essential course activities" under the ADA.

"Reasonable Accommodations" Explained:

The ADA also stipulates that post-secondary institutions are responsible for providing necessary accommodations when a student declares a disability. The *Americans with Disabilities Act Handbook* defines an accommodation as "any change in the work environment [or instructional setting] or in the way things are customarily done that enables an individual with a disability to enjoy equal opportunities". This may include:

- Providing or modifying equipment (e.g., allowing the student to tape-record lectures instead of taking notes)
- Making facilities accessible - removing barriers (e.g., holding class on the ground floor) and make the class accessible so people with disabilities can participate
- Providing readers or interpreters (e.g., sign language interpreters)

The following are other examples of accommodations post-secondary institutions might provide. Please note that this list is not inclusive, and that the best method of identifying needed accommodations is to ask the individual in question what works best for him/her.

- **Interpreters**
- **Testing Adaptations**
- **Seating**
- **Oral Instructions (vs. written)**
- **Tapes of Classes**
- **Accessible Space**
- **Extra Time for Tests**
- **Lowered Light Switches**
- **Tests on Tape**
- **Large Print Material**
- **Calculators**
- **Blocks Under Desk**
- **Note-takers**
- **Technical Assistance**
- **Flexible Schedule**
- **Accessibility**

The Importance of "Declaring" the Disability:

An important element of the "reasonable accommodations" section of the ADA is that 1) the student has the right to decide if they want to declare their disability, and 2) **only if they have done so to the appropriate individual** (e.g., the university disability office, etc. - this varies across settings) is the instructor responsible for providing accommodations. No declaration, no accommodation. It is up to the student to decide in which class(es) to declare a disability. It is important to note that all of the student's

work and grades up until the time he/she declared the disability ARE VALID, and *do* count towards the final grade. The declaration of a disability does not "wipe out" any past failing grades, etc. Also, university staff do have the right to ask for and/or require appropriate documentary verification of the disabling condition, such as a doctor's letter (for physical disabilities), a psychological assessment report (for learning disabilities or mental illness) or a letter from the the high school's special education director can be accepted.

"Undue Hardship" Explained:

This section of ADA addresses the common-sense notion that not all accommodations can be provided in all settings. Here, the law stipulates that universities are not required to provide an accommodation that will impose an "undue hardship" on the operation of the class, where "undue hardship" means significant difficulty or expense in, or resulting from, the provision of the accommodation. The following are used to help make this determination:

- **Size of the program/class**
- **Financial resources**
- **Cost of accommodation**
- **Alteration or change in the course requirements:** e.g., a course instructor is not required to transcribe his lectures into overheads to accommodate a hearing impaired student (though this could be pursued as a possible accommodation, if acceptable to both the student and the instructor).
- **Disruption of other students:** Note: instructors should only invoke this "undue hardship" clause after having attempted reasonable accommodations in the classroom, or in cases of extreme student behavior. For example, a student with epilepsy cannot be automatically excluded from a class because the instructor fears that a disruption (e.g., a grand mal seizure) may occur during class. However, if this student is enrolled in a class and does experience grand mal seizures in class on a regular basis, the instructor *may* have a case for claiming "undue hardship" on the basis of disruption.