

Disabilities in Higher Education

YOUR LEGAL RIGHTS

1. What laws protect students with disabilities at colleges, universities, junior colleges, professional schools, and trade and technical schools?

There are five laws that prohibit disability discrimination at these higher education institutions. The **Americans with Disabilities Act (ADA)** prohibits discrimination based on disability at all public and private schools, except for schools run by religious institutions. **Section 504 of the Rehabilitation Act (Section 504)** prohibits such discrimination at any school, including church-affiliated schools, that receives federal funds, such as student financial aid loan programs. These two laws provide similar protections to students and applicants with disabilities.

In California, students with disabilities are also protected by the Unruh Civil Rights Act (Unruh Act) (private schools), California Government Code Section 11135 (Section 11135) (public schools), and California Civil Code Section 54 (Section 54) (both public and private schools). Generally, any violation of the ADA or Section 504 is also a violation of the Unruh Act, Section 11135, or Section 54, but these state laws may provide greater protections in some cases.

2. Who is protected by the ADA, Section 504, and California's Unruh Act and Section 54?

A person with a **physical or mental impairment** that **substantially limits a major life activity** is “disabled” under the ADA or Section 504. A person with a **physical or mental impairment** that **limits a major life activity** is “disabled” under the Unruh Act and other California state laws. It is helpful to break down this definition into its parts:

“Major life activities” include:

- Seeing
- Hearing
- Speaking
- Performing manual tasks
- Sexual relations
- Sleeping
- Breathing
- Concentrating
- Walking
- Caring for oneself
- Learning
- Thinking
- Reproduction
- Interacting with others
- Working

“**Substantially limiting**” means the impairment significantly restricts how someone can perform a major life activity, compared to the average person. “**Limiting**” means the impairment makes the achievement of a major life activity difficult. Negative side effects of medications may be considered in determining whether someone is substantially limited.

3. What if my condition is stabilized with medication or I use a prosthetic device?

According to a 1999 United States Supreme Court case, “mitigating measures” should be considered in determining whether an individual is disabled under the ADA. This means if a person is very stable on her medication, or is using a prosthetic, and is not currently substantially limited in a major life activity, that person is not “disabled” under the ADA or Section 504. California law is distinct from, and stronger than, the ADA or Section 504. Under the Unruh Act, Section 11135, and Section 54, mitigating measures may not be considered in determining whether a person is disabled. This means that people who are currently stable due to medications or other treatment are still protected.

4. Who else is protected?

The ADA and Section 504 also protect people who are regarded or treated as having a disability, even if they do not. Also protected are persons with a record or history of a disability. In addition, the Unruh Act, Section 11135, and Section 54 protect persons who are not currently disabled, but who may become disabled in the future.

5. What are my rights if I have a disability?

Under federal and state law, schools cannot discriminate against qualified students and applicants with disabilities. This means that if you have a disability and meet academic or other standards for admission to or participation in school programs, you cannot be treated differently from other students—denied admission or enrollment, graded poorly, failed, suspended, expelled, or harassed—because of your disability. Qualified students with disabilities may also obtain **reasonable accommodations** so that they can participate in school programs.

Generally, schools are required to ensure that all of their programs, services, activities, and facilities are accessible to persons with disabilities. Further, you may not be retaliated against for asking for an accommodation or otherwise asserting your rights.

6. What is a reasonable accommodation?

Reasonable accommodations are adjustments or modifications made to a school policy, or specific supports or services provided to a student with a disability, to enable the student to participate in school programs, including admissions, academics, vocational education,

housing, physical education, athletics, recreation, extracurricular activities, transportation, counseling, health insurance (covering both physical and psychiatric disabilities), and financial aid.

What is a reasonable accommodation for a particular student will depend upon the situation and the type of program. The accommodation, however, may not be unduly costly or disruptive for the school, or be for the student's personal use only. A student has the right to refuse a particular accommodation.

Examples of modifications of school policies include:

- Not assessing penalties for spelling errors on papers or exams.
- Allowing substitutions for certain required or prerequisite courses.
- Allowing extra time on exams or to turn in papers.
- Providing exams in an alternate format.
- Allowing a reduced course load and extra time in which to earn a degree.
- Providing housing accommodations for a student's attendant.
- Reassigning a classroom to an accessible location.
- Providing assistance in applying for financial aid.

Examples of supports or services that may be provided to a student include:

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| Interpreters | Closed caption decoders |
| Notetakers | Open and closed caption TV |
| Taped texts | Voice synthesizers |
| Readers | Specialized gym equipment |
| Videotext displays | Raised-line drawing kits |
| Talking calculators | Assistive listening devices or systems |
| Braille calculators, printers, or typewriters | TTYs or TTDs |
| Telephone handset amplifiers | Reaching device for library use |

Students may not be charged for these supports and services, although the school may pay for them by helping a student obtain reimbursement from an outside organization, such as a state rehabilitation agency.

The process of obtaining supports or services in higher education settings may be different from that in elementary, middle, and high school. A student with a disability who has an Individualized Education Plan (IEP) in grade school shares responsibility—and sometimes

does not participate much at all—for identifying and obtaining supports with parents, school administrators, teachers, and specialists. In postsecondary schools, however, the student has the primary responsibility for identifying and documenting her disability and requesting specific supports, services, and other accommodations to meet her needs.

7. When is a school required to accommodate a student or applicant?

A school is only required to accommodate known disabilities. There is no one specific way for a student to notify a school about a disability, and the school’s knowledge of the disability may be implied. To guarantee the legal right to an accommodation, however, you should explicitly disclose your disability—**before** you receive a low grade because you did not have the accommodation you need.

8. Who do I talk to if I need a reasonable accommodation?

Generally, postsecondary schools have Offices for Students with Disabilities which process requests for accommodations; in California, for example, all community colleges have Disabled Students Programs & Services (DSPS) offices that handle accommodations requests. Whether or not this is the case, a student with a disability can also speak with the school’s ADA or Section 504 Coordinator, the Dean of Student Affairs, an academic advisor, or a teacher to disclose a disability and ask for an accommodation.

9. What do I have to say to let the school know I need a reasonable accommodation?

You must provide the school with enough information to show the existence of an impairment, and its impact on a major life activity. To be safe, you should use words such as “disability,” “impairment,” “limiting,” “major life activities,” and “accommodation.”

10. Do I have to request an accommodation in writing?

NO. You can request an accommodation in writing, orally, through e-mail, or by any other form of communication. You may want to keep written records of your request, however, in case there is a dispute in the future over whether you made the request.

11. Do I have to release my medical records to obtain accommodations?

NO. If your disability or your need for accommodation is not obvious, however, your school may ask for reasonable medical documentation. The documentation should be limited to a doctor’s note or other documents, such as test results or diagnostic reports from grade school, showing that you have a disability and need accommodation. You are **not** required to produce your entire medical or mental health history.

12. What happens after I request an accommodation?

Once you request an accommodation, the school must make a reasonable effort to determine the appropriate accommodation. However, you must also be willing to participate in the process of developing and implementing the accommodation.

Students who do not fully participate in the process may lose their rights. This participation may require the student to submit requested medical documentation and to attend scheduled meetings. If the school or student rejects a suggested accommodation, the student must take steps to continue the process.

To protect your rights, take proactive steps, such as:

- Presenting accommodation requests to the school in writing;

- Suggesting alternative accommodations;

- Scheduling and attending meetings with school officials to discuss accommodations;

- Writing down the names of people you speak to about accommodations, and also the dates and times you talk to them;

- Keeping copies of all documents relating to your disability and education, including any letters you send to or receive from your school.

13. What if a professor tells me I can't have the accommodation I need?

Sometimes professors don't understand that accommodations are necessary so that students with disabilities can participate fully in class. Even if the professor is concerned about having her lecture taped, she may have to permit taping to allow a student with visual impairments to benefit from a course. Even if a professor is uncomfortable with permitting extra time for examinations, she may have to allow a student who needs extra time for processing information to have it. If your professor refuses to let you use the accommodation you need, or gives you "attitude" about using it, contact the Office for Students with Disabilities, the Dean of Student Affairs, or your faculty advisor to ask them to speak with the professor.

14. What if I need an accommodation to apply to the school?

The school must modify admissions tests so that test results accurately reflect your aptitude, knowledge, or achievement level—not your disability. Under Section 504, however, the school cannot ask you if you have a disability and need an accommodation during the admissions process. If you need a reasonable accommodation to complete admissions forms, ask the school admissions office or Office for Students with Disabilities.

15. What if the campus is inaccessible?

By law, all schools have to make all their programs, services, and activities accessible to students with disabilities, in the most integrated setting appropriate. Schools can do this by making all of their facilities accessible, or by reassigning students or programs to accessible facilities. Additionally, all new school buildings should be completely accessible. To make a facility or part of a facility accessible, schools should

Install ramps	Rearrange toilet partitions to increase maneuvering space
Make curb cuts in sidewalks and entrances	Insulate lavatory pipes
Reposition shelves	Install a raised toilet seat
Rearrange tables, chairs, and vending machines	Install a full-length bathroom mirror
Widen doorways	Create designated accessible parking spaces
Eliminate turnstiles	Maintain elevators
Install designated accessible wheelchair seating in auditoriums	Install automatic door openers
Add Braille labeling in elevators	Install visual alarms
Install grab bars at toilets	Provide TTYs and TTDs
	Ensure that school websites are accessible

If you think your classroom building, dormitory, library, student center, school website, or other school facilities are inaccessible, contact your Office for Students with Disabilities or Dean of Student Affairs.

16. What can I do if my college refuses to give me the accommodations I need, or discriminates against me because of my disability?

If your school refuses to provide you with the reasonable accommodation you need, fails to address access problems, or otherwise discriminates against you because of your disability, you can:

File an internal grievance or complaint with the school.

File a complaint with the **Office for Civil Rights (OCR)** of the U.S. Department of Education. (<http://www.ed.gov/print/about/offices/list/ocr/docs/howto.html>)

File a complaint with the **U.S. Department of Justice (DOJ)**. (<http://www.ada.gov/enforce.htm#anchor218282>)

Try to resolve things informally, by negotiating directly with the school or with a mediator.

File a lawsuit: For violations of the ADA and Section 504 you can file a lawsuit in federal or state court. If you seek money damages only (under \$5000), you can file a complaint in small claims court under the Unruh Act, Section 11135, or Section 54. **You can file a lawsuit regardless of whether you have filed a complaint with the school, OCR, or DOJ.**

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

