

The U.S. Department of Education  
Office for Civil Rights (OCR)



**Students with disabilities attending a  
postsecondary Institution**

Ohio AHEAD conference – October 23, 2015

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**What Does OCR Do?**

OCR enforces several civil rights laws. These laws prohibit discrimination on the basis of race, color, national origin, sex, disability, and age, as well as discrimination against certain patriotic youth groups that wish to meet at public schools. To do this, OCR:

- Resolves complaints
- Conducts compliance reviews
- Provides technical assistance

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**Section 504 of the Rehabilitation Act**

- Applies to all recipients of Federal Financial Assistance
  - Includes all colleges who receive funds from the U.S. Department of Education
  - Common funding sources are Federal student loan and grant programs
- States that no otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance

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## Title II of the Americans with Disabilities Act of 1990

- Prohibits discrimination on the basis of disability by “public entities,” including state and community colleges, universities, and vocational schools, regardless of whether they receive Federal financial assistance
- Does not apply to private colleges
- Section 504 and Title II of the ADA have similar compliance standards

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## Scope of Covered Programs

Section 504 applies to all of the college's programs and activities, including:

- Academics
- Athletics
- Employment
- Housing
- Events, etc.

Don't forget that Section 504 also requires facilities, etc., to meet accessibility requirements!

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## Scope of Covered Programs (cont.)

A recipient that considers participation by students in education programs or activities that it doesn't operate as part of or equivalent to its programs or activities must ensure that the other education program/activity, as a whole, provides an equal opportunity to participate.

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## Section 504 and the ADA: Whom does the law protect?

A person with a disability is one who:

- Has a physical or mental impairment that substantially limits a major life activity

*or*

- Has a record of such an impairment

*or*

- Is regarded as having such an impairment

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## Substantial Limitation

- Does not mean severe restriction or inability to perform a major life activity
  
- Look to condition, manner, duration

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## Section 504 / Title II Principles

- When requested, postsecondary institutions must provide appropriate academic adjustments and/or auxiliary aids and services necessary to afford a qualified student with a disability an equal opportunity to participate in the institution's program.
  - Academic adjustments and auxiliary aids and services must be provided in a timely manner.
  - Colleges must ensure students with disabilities are not discriminated against due to the absence of auxiliary aids or services.
- Colleges may need to modify their facilities for students with disabilities.
- A recipient shall operate its programs in the most integrated setting appropriate.

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## Section 504/ADA Coordinator and Grievance Procedures

If a student believes he/she is being discriminated against on the basis of disability, the student may:

- Contact the person who coordinates the school's compliance with Section 504 or the ADA.
- Consult the school's grievance procedures.
- Contact OCR.

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## The Process

A postsecondary school may require a student to follow reasonable procedures to request an academic adjustment. The student is responsible for knowing and following those procedures.

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## Admission

- Colleges may not deny admission, on the basis of disability, to qualified students with disabilities.
- Students with disabilities do not have to disclose their disability before admission, or after admission, unless they want accommodations.

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## Initiating the Process

- Colleges generally will not ask students whether they need accommodations.
- If a college student wants an academic adjustment or auxiliary aids and services, the student is responsible for:
  - Notifying the college of the disability
  - Notifying the college of the need for academic adjustment or auxiliary aids and services

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## Documentation

Upon request, a student must provide documentation to support that the student currently has a disability and to support the need for academic adjustments/ auxiliary aids and services.

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## Documentation (cont.)

- Colleges cannot require more diagnostic information than is necessary to establish:
  - the existence of an impairment that substantially limits a major life activity, and
  - a nexus between the impairment, limitations, and requested accommodations.

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## Determining the Student's Needs

- The educational institution and student should engage in an interactive process to determine appropriate academic adjustments and/or auxiliary aids and services.
- Academic adjustments and auxiliary aids must be determined based on the nature of the individual's disability and needs, as well as the barriers posed by the program.

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## Academic Adjustments

- College must make modifications to academic requirements necessary to ensure requirements do not discriminate on the basis of disability against a qualified person with a disability.
- Examples of possible modifications are:
  - change in length of time to complete a program
  - substitution of courses
  - adaptation of manner in which courses are conducted

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## What Is Not Required

- College is not required to change academic requirements that are essential to
  - The instruction being pursued by the student;
  - or
  - Any directly related licensing requirements.
- College is not required to alter the fundamental nature of its program.
- OCR gives “appropriate deference” to college's academic discretion.

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## Auxiliary Aids

Colleges must take such steps as are necessary to ensure that no student with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

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## Examples of Auxiliary Aids

- Digital, Braille, alternate media and readers
- Notetakers and Interpreters
- Computers with adaptive equipment and software and adaptive classroom equipment

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## To be Useful, Tools Should be...

- Available
- Working
- Current (not obsolete)
- In most cases, commonly accepted and widely available
- Compatible with institution's computing environment

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## What Is *Not* Required

- Auxiliary aids or services that college can demonstrate would result in:
  - A *fundamental alteration* in the nature of its program; or
  - Undue financial or administrative burdens
    - Must take into account all available resources
    - If something would impose an undue burden, college must provide an alternative
- Services or devices of a personal nature, such as
  - Attendants
  - Individually prescribed devices (e.g., hearing aids)
  - Readers for *personal* use or study

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## ADA: Accessible Communications & Auxiliary Aids

- Communications must be “as effective as” communications with non-disabled persons.
- “Appropriate” auxiliary aids and services where necessary for equal opportunity.
- Give “primary consideration” to requests of person with disability but ...
- Not required to honor preference if effective alternative available.

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## Effective Communication Guidance

- OCR and DOJ's Civil Rights Division published this guidance on November 12, 2014
- It discusses meeting the Communication Needs of Students with Hearing, Vision, or Speech Disabilities

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**Does the school have to give a student the aid or service requested?**

- Under Title II, the school must provide the aid or service requested unless the school can prove that a different auxiliary aid or service is as effective in meeting the student's communication needs (in which case the school must provide that alternative), or the school can prove that the aid or service would result in a fundamental alteration or in undue financial and administrative burdens (in which case the school must take other steps to ensure that the student can participate).
- Schools are not required to provide aids or services greater than what is needed to ensure effective communication, or to comply with requests about details of the aid or service (such as particular brands or models) that are not relevant to its effectiveness.

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**What types of aids or services could be required for students?**

- There are no categorical rules. A school must assess the needs of each individual.
- For a student who is deaf, deaf-blind, or hard of hearing, some examples are: exchange of written materials, interpreters, note takers, real-time computer-aided transcription services (for example, CART), assistive listening systems, accessible electronic and information technology, and open and closed captioning.

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**Types of aids or services (cont.)**

- For a student who is blind, deaf-blind, or has low vision, some examples are: qualified readers, taped texts, audio recordings, Braille materials and refreshable Braille displays, accessible e-book readers, screen reader software, magnification software, optical readers, secondary auditory programs (SAP), and large print materials.
- For a student with a speech disability, some examples are: a word or letter board, writing materials, spelling to communicate, a qualified sign language interpreter, a portable device that writes and/or produces speech, and telecommunications services.

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## Other Relevant Laws: Title III of the ADA

- Applies to private colleges, whether or not they receive Federal financial aid.
- Religious entities are exempt.
- Responsible agency is DOJ.
- Similar, not identical, to Title II and §504.
- See [www.ADA.gov](http://www.ADA.gov) for more information

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## Other Relevant Laws: Fair Housing Act

- Applies to dormitories and many other college housing options. It contains:
  - some architectural requirements
  - policy modifications provisions
    - (Ex: A dormitory that offers residents ample, unassigned parking must honor a request from a resident with a mobility disability for a reserved space near the entrance if necessary to assure that she can have access to her dorm)
- Responsible agency is HUD
- See [www.hud.gov](http://www.hud.gov)

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## OCR Guidance on Accessible Technology

- Joint OCR-DOJ Dear Colleague Letter on Electronic Book Readers (June 29, 2010)  
– [www.ed.gov/ocr/letters/colleague-20100629.html](http://www.ed.gov/ocr/letters/colleague-20100629.html)
- FAQ About the June 29, 2010 Dear Colleague Letter (May 26, 2011)  
– [www.ed.gov/ocr/docs/dcl-ebook-faq-201105.html](http://www.ed.gov/ocr/docs/dcl-ebook-faq-201105.html)

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## Technology

Digital technology and the ways it is used in academia evolve rapidly and occasionally radically. General legal requirements and principles are enduring, but their application to particular technologies and descriptions of approaches to technology access issues necessarily is fluid.

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## What Is “Equal Access?”

- OCR’s guidance on emerging technology sets the standard:
- “Receive all the educational benefits provided by the technology in an equally effective and equally integrated manner”
- Must be able to:
  - acquire the same information,
  - engage in the same interactions, and
  - enjoy the same services.

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## Equal Access

- Devices or services that enable effective communication for people with disabilities, including assistive technology (AT)
- Two-pronged approach
  - Assistive technology
  - Alternate media
- Most integrated setting appropriate to needs of student with a disability

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## Equal Access (cont.)

- Information about accessible services and activities required
- This information must also be accessible

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## Issues

- **timeliness** of access to information
- **accuracy** of communication
- provision in a **manner and medium** appropriate to the significance of the message and the abilities of the individual with the disability

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