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# Rights to Assistive Technology in Higher Education

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## **1. Do I have a right to assistive technology from my college<sup>1</sup>?**

Colleges have legal obligations to provide equal opportunities to students and applicants with disabilities. These obligations apply to all college programs, services and activities, including: admissions, academics, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, and extracurricular activities. These obligations include a right to assistive technology in order to allow students with disabilities to receive the same educational benefits as students without disabilities.<sup>2</sup>

## **2. Which laws apply to my college?**

The source of your right to assistive technology in higher education will depend on whether your college is public or private, whether it receives federal funds, and whether it is in California or out of state. Some colleges

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<sup>1</sup> This fact sheet will refer to all institutions of higher educations, including junior colleges, colleges, universities, professional school, trade and technical schools, as "colleges."

<sup>2</sup> For more information about rights to AT in higher education, see, U.S. Department of Education Office of Civil Rights, Auxiliary Aids and Services for Postsecondary Students with Disabilities: Higher Education's Obligations under Section 504 and the ADA, at <http://www2.ed.gov/about/offices/list/ocr/docs/auxaids.html>.

may be covered by more than one of these laws. Legal protections under these laws are similar, but remedies for violations may vary.

## **Federal Laws**

The following federal laws apply to colleges anywhere in the United States.

### *1. Section 504 of the Rehabilitation Act (Section 504)*

Section 504 prohibits disability-based discrimination by colleges that receive federal funds. Virtually all colleges receive some form of federal funds, including through student financial aid loan programs. Section 504 covers colleges run by religious organizations if they receive federal funds.

### *2. The Americans with Disabilities Act (ADA)*

Title II of the ADA prohibits disability-based discrimination in almost all public and private colleges, whether or not they receive federal funds. Title II of the ADA covers public institutions of higher education such as community colleges, California State Universities, and the University of California. Title III of the ADA covers private institutions of higher education, but colleges run by religious organizations are exempt.

## **California State Laws**

The following state laws apply to colleges in California. Other laws may apply to colleges in other states.

### *1. Government Code Section 11135 (Section 11135)*

Section 11135 gives people with disabilities the right to full and equal access to the benefits of any program or activity that is administered by the state, or receives financial assistance from the state. This includes California colleges that receive state funding. Violations of Section 504 and the ADA will also violate Section 11135.

### *2. The Unruh Civil Rights Act (Unruh Act)*

The Unruh Act prohibits disability-based discrimination by any business establishment, including colleges. Like Section 11135,

violations of Section 504 and the ADA will also violate the Unruh Civil Rights Act. Unruh Act, Cal. Civ.Code §§ 51, *et seq.*

### 3. *Disabled Persons Act, California Civil Code Section 54*

California Civil Code Section 54 gives individuals with medical conditions and disabilities the same right as the general public to the full and free use of public places, including public colleges. Like Section 11135, violations of Section 504 and the ADA will also violate Civil Code Section 54. *Disabled Persons Act, California Civil Code § 54, et seq.*

### **3. Who is protected under these laws?**

You are covered by the laws listed above if you are a “person with a disability,” and, under the ADA, if you are “qualified” for the public program, benefit or activity.

You are “qualified” for a benefit, program or activity of a public entity if you meet the basic eligibility criteria for participation, with or without reasonable modifications to the programs policies, practices or procedures. 28 C.F.R. § 35.104. This means that you can be qualified even if you need a reasonable modification in order to participate.

Under both federal and state definitions of disability, most people with a physical or mental impairment that causes limitations will be protected. The federal and state law definitions of disability are below.

#### **Federal Law**

Title III of the ADA protects individuals with disabilities from discrimination by private businesses. Under the ADA, disability means:

1. Having a physical or mental impairment that substantially limits one or more of your major life activities (such as personal care, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working).
  - a. This includes limitations of major bodily functions (such as the immune system, normal cell growth, digestive, bowel, bladder, brain, respiratory, brain, circulatory, endocrine, and reproductive functions); or

2. Having a record of such an impairment (such as a condition in remission); or
3. Being regarded as having such an impairment (such as a person who has severe burns but has no impairments).

42 U.S.C. § 12102(2); 28 C.F.R. § 36.104.

### **State Law**

In contrast to federal law, state law only requires a “limitation” of a major life activity rather than a “substantial limitation” of a major life activity.

California Government Code § 12926.1(d) California Government Code §§ 12926(j)(1)(A), (m)(1)(B)(i).

### **4. What types of discrimination do these laws prohibit?**

These laws prohibit colleges from discriminating against students with disabilities. This includes taking actions, or refusing to take appropriate actions, that have the purpose or effect of denying students with disabilities the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other students. The ADA and Section 504 have specific provisions that establish what actions are discriminatory. Some of these provisions that may apply to you as a higher education student with a disability include:

1. Using eligibility criteria that might screen out qualified people with disabilities. 28 C.F.R. § 130(b)(8);
2. Denying you an equal opportunity to participate in, or benefit from, any program, benefit of activity of a public entity. This includes failing to provide aids, benefits and services that give you equal opportunity to obtain the same result, gain the same benefits, or reach the same level of achievement as students without disabilities. 28 C.F.R. § 130(b)(1);
3. Providing you with different or separate benefits or services than are provided to others, unless that is necessary to effectively provide the benefits or services to you. 28 C.F.R. § 130(b)(1), (2);
4. Failing to administer services, programs and activities in the most integrated setting appropriate to your needs. 28 C.F.R. § 130(d)

5. Using criteria and methods of administration that deny you access to public programs and activities. 28 C.F.R. § 130(b)(8);
6. Perpetuating discrimination by providing significant assistance to any agency that discriminates on the basis of disability. 28 C.F.R. § 130(b)(1)(v); and
7. Selecting sites that have the effect of excluding you, denying you benefits, or otherwise subjecting you to discrimination; 28 C.F.R. § 130(b)(4)(i).

## **5. When does a college have to provide me with assistive technology?**

A college must provide you with assistive technology that allows you to fully participate as a student if the technology: 1) is an “auxiliary aid or service” that allows you to communicate effectively; or 2) is a reasonable modification to the entity’s policies, procedures or practice, unless that modification constitutes an undue financial burden or a fundamental alteration of the college’s program. Colleges must also provide auxiliary aids and services when necessary to make sure that people with disabilities have an equal opportunity to benefit from their goods and services. However, a college does not have to provide assistive technology if it is a “personal device” that you would use outside of the public program.

### **Auxiliary Aids and Services**

Colleges must give qualified people with disabilities the appropriate “auxiliary aids and services” to enable them to communicate effectively in applying for or participating in the college’s program. 28 C.F.R. §§ 35.160(a), (b); 36.303.

Examples of auxiliary aids and services are:

1. Qualified interpreters, note takers, transcription services, written materials, exchange of written notes, telephone handset amplifiers, assistive listening devices. Telephones compatible with hearing aids; open and closed captioning, telecommunications devices; videotext displays, etc.;

2. Qualified readers, taped texts, audio recordings; Brailled materials, large print materials, etc.;
3. Acquisition or modification of equipment or devices; and
4. Other similar services and actions. 28 C.F.R. §§35.104; 36.303.

Some technologies that may qualify under this section include JAWS screen reading software, ZoomText, Dragon Naturally Speaking voice recognition software, and CART (Captioned Audio Realtime Transcription). This may also include some other technology to aid communication.

In determining what auxiliary aids and services are necessary, a public college must give primary consideration to the individual's request. The entity must provide the aids and services in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. Other factors that go into determining the appropriateness of an auxiliary aid or service include:

1. The method of communication used by the individual;
2. The nature, length and complexity of the communication involved; and
3. The context in which the communication is taking place.

28 C.F.R. §35.160(b).

If a college provides telephones for students to make outgoing calls, for example in a dormitory, it must provide telecommunication systems to communicate with students who have hearing or speech disabilities. 28 C.F.R. §36.303(d)(1). These may include TTY (text telephone), video remote relay, VRI (video remote interpreting), videophones and similar devices. In addition, if a public college communicates by telephone with students, it must provide telecommunication systems that allow students with hearing or speech disabilities to communicate effectively. 28 C.F.R. §35.161.

### **Reasonable Modifications**

Private and public colleges must make reasonable modifications to their policies, practices, and procedures when necessary to afford equal treatment to people with disabilities. 28 C.F.R. §§ 35.130(b)(7), 36.302. For example, a college may have to waive a ban on taping classes to allow a

student with a vision disability to benefit from the course. Or, a college may have to modify its policies in order to allow a student with a disability to link an adaptive device to its computerized library system in order to do research.

A student with a disability has the responsibility to request a reasonable modification, and may be required to provide medical support that the individual has a disability-related need for the modification. The medical support does not have to indicate the nature of the disability. It only has to indicate the limitations that result from the disability and, if possible, suggest reasonable modifications or assistive technology devices that may help provide access. If a reasonable modification is granted, college cannot require the student to pay for it.

A college does not have to provide assistive technology if it would create an undue financial burden on the public entity considering the resources of the entire agency, or fundamentally alter the nature of the services that the college provides. However, the college must provide an alternative aid or service, if one exists, that would not result in an undue burden or fundamental alterations

### **Personal Devices**

A college does not have to provide assistive technology that you use outside of your participation in the college programs. This includes: personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing. 28 C.F.R. §§ 35.135; 36.306.

## **6. How should I make a request for assistive technology?**

Contact the Disabled Student Services Program (or other office for students with disabilities) to find out how to request a reasonable accommodation as a student or applicant with a disability. If you are not sure what type of accommodation you need, that office might be able to help you figure it out. You should make your request in writing, explaining: 1) that you are a person with a disability; 2) the ways in which your disability affects your participation in school or ability to submit an application; 3) the specific accommodations that you need, including AT;

and 4) the date by which you would like the college to respond to your request.

If your disability is not obvious, the college can require that you submit a letter from your doctor or other professional who can support your need for the accommodation. The letter does not have to identify your specific diagnosis or disclose medical information beyond your functional limitations as a person with a disability, and need for the accommodation that you are requesting.

## **7. What can I do if I think that a college is unlawfully denying my request for AT?**

If you believe that a college is unlawfully denying your request for assistive technology, or otherwise discriminating against you on the basis of your disability, you can: file an internal grievance or appeal with the college; file an administrative complaint; try to resolve the matter informally through private mediation; or file a lawsuit.

### **Internal Grievance**

You can ask the college's Disabled Student Services Program, ADA or 504 Coordinator, or the Dean of Student Affairs about the college's internal grievance or appeal procedure, and how to file a grievance or appeal. You should file the internal grievance as soon as possible, but no later than **180 days** after the discrimination occurred.

### **Administrative Complaint**

Whether or not you file an internal grievance, you can file an administrative complaint with the Office of Civil Rights (OCR) of the U.S. Department of Education (for public colleges) or the U.S. Department of Justice (DOJ) (for private colleges). If you file a complaint with the wrong department, it will be forwarded to the correct department.

### **OCR Complaint (Public Colleges)**

OCR must receive your complaint no later than **180 days** from the date of discrimination, or within **60 days** of the college's final decision on an internal grievance. For public colleges in California, the contact information for OCR is:

United States Department of Education  
Office for Civil Rights  
Region IX  
50 Beale Street, Suite 7200  
San Francisco, CA 94105  
Phone: 415-486-5555  
TDD: 877-521-2172  
Email: [OCR.SanFrancisco@ed.gov](mailto:OCR.SanFrancisco@ed.gov)  
Online Complaint Form:  
<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

When you file a complaint with OCR, you have the choice of asking for Early Complaint Resolution (ECR), or going ahead with an evaluation or investigation. The ECR process allows you and the college to try to resolve your complaint, with the impartial assistance of OCR. If you choose not to use ECR, or do not reach an agreement through ECR and file another OCR complaint, OCR will do an initial evaluation and might call you for more information. If the ORC investigator finds support for your complaint s/he will do an investigation. After the investigation, OCR will either: dismiss the complaint; work to resolve the complaint; or give the college a “voluntary resolution plan,” which is a written agreement that OCR will monitor to make sure the college complies with the law.

### **DOJ Complaint (Private Colleges)**

To make a complaint for a violation of the ADA or Section 504 against a private college you can file a complaint with the Department of Justice.

1. Write a letter to:

U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Educational Opportunities Section, PHB  
Disability Rights Section – 1425 NYAV  
Washington, D.C. 20530  
Phone: (202) 514-4092, or 877-292-3804 (toll-free)  
Email: [education@usdoj.gov](mailto:education@usdoj.gov)

Additional information about filing ADA complaints with the Department of Justice, including the type of information you should include in your complaint and the amount of time you have for filing, is available at the

Department of Justice's Website:

[http://www.ada.gov/fact\\_on\\_complaint.htm](http://www.ada.gov/fact_on_complaint.htm). You can file a DOJ complaint at any time.

### **Private Mediation**

Whether or not you file an internal grievance or administrative complaint, you can try to resolve your dispute through private mediation. When you are looking for a mediation center, try to find one that has experience with issues relating to disability discrimination and reasonable accommodations.

### **Lawsuit**

Whether or not you file an internal grievance or administrative complaint, you can file a lawsuit in state or federal court. If you want to sue a public college for money damages, you must first file a Government Tort Claim within **six months** of the date of your injury. California Government Code §§ 810-996.6. Even if you do not seek money damages, court actions have strict filing deadlines called statutes of limitations. The statutes discussed here have a two year statute of limitations. However, you should consult with an attorney about deadlines, and other issues, before filing a lawsuit.

## **8. What are some resources?**

### **Resources**

1. [http://www.dds.ca.gov/AT/at\\_network.cfm](http://www.dds.ca.gov/AT/at_network.cfm) - California Assistive Technology Network - The Department of Rehabilitation, in conjunction with Assistive Technology (AT) users, AT providers and state agencies, coordinates California's efforts to expand and improve access to AT under the Tech Act of 1993. AT Network primary mission is to:
  - a. Reduce barriers people with disabilities often face in obtaining AT.
  - b. Promote increased public awareness of what AT can do for people with disabilities.
  - c. Develop strategies to decrease duplication among state agencies and other helping organizations.

AT Network maintains a database of AT resources and providers in California, and can help locate sources of AT for specific

disabilities. Referrals are made to groups that provide guidance about AT and to potential AT funding sources.

2. California Independent Living Centers. For a list of independent living centers by county, please see:  
<http://www.rehab.cahwnet.gov/ILS/ILC-List.html>.
3. [www.Askjan.org](http://www.Askjan.org) – While this federal government website is designed for employment situations it also has good information on assistive technology resources.

*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>