

## **REGULATIONS**

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

The Americans with Disabilities Act of 1990 (ADA) is the end result of almost 20 years of debate on disability. The stated national goals of the ADA are to guarantee that the rights of persons with disabilities. It provides the general framework and approach for ending discrimination so that people with disabilities have equality of opportunity, a chance to fully participate in society, are able to live independently, and can be economically self-sufficient.

You will find that ADA Titles I, II, III, Sections 504 and 255 are intertwined for the most updated and finest universal services available to students with disabilities. Therefore, you will find mention of a number of these titles and sections throughout this Handbook.

The ADA has five sections, or Titles. The Titles that refer to students in higher education are Title I and Title III.

### **Title I Regulation**

Title I addresses accessibility issues regarding all academic and social activities on a campus. It also prohibits public entities from providing services that discriminate against persons with disabilities. Specific actions must be taken by public agencies to avoid discrimination. For example, the law requires that:

- The campus must be equipped with a wheelchair and a lift.
- Public agencies *must* provide complete accessibility — not limited to all buildings, bathrooms, activity areas, and classrooms.
- New facilities must be accessible.
- Alterations to facilities must include features to make them accessible.

### **Title II Regulation**

*"A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of a service, program, or activity conducted by a public entity."*

It is, therefore, the school's responsibility to provide these auxiliary aids and services in a timely manner to ensure effective participation by students with disabilities. If students are being evaluated to determine their eligibility under Section 504 of the ADA, the recipient *must* provide auxiliary aids in the interim.

Title II Regulation contains comparable provisions.

The Section 504 Regulation also states:

*[A]ids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and non-handicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.*

The institution must analyze the appropriateness of an aid or service in its specific context. For example, the type of assistance needed in a classroom by a student who is hearing-impaired may vary, depending upon whether the format is a large lecture hall or a seminar. With the one-way communication of a lecture, the service of a note-taker may be adequate, but in the two-way communication of a seminar, an interpreter may be needed. College officials also should be aware that in determining what types of auxiliary aids and services are necessary under Title II of the ADA, the institution *must* give primary consideration to the requests of individuals with disabilities.

### ***Personal Aids and Services***

An issue that is often misunderstood by postsecondary officials and students is the provision of personal aids and services. Personal aids and services, including help in bathing, dressing, or other personal care, **are not required to be provided** by postsecondary institutions. The Section 504 Regulation states:

*Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.*

Title II of the ADA similarly states that personal services are not required.

In order to ensure that students with disabilities are given a free appropriate public education, local education agencies are required to provide many services and aids of a personal nature to students with disabilities when they are enrolled in elementary and secondary schools. However, once students with disabilities graduate from a high school program or its equivalent, education institutions are no longer required to provide aids, devices, or services of a personal nature.

Postsecondary schools do not have to provide personal services relating to certain individual academic activities. Personal attendants and individually prescribed devices are specifically the responsibility of the student who has a disability, not the responsibility of the institution. For example, readers may be provided for classroom use, but institutions are not required to provide readers for personal use or for help during individual study time.

### **Title III Regulations**

This section of the ADA addresses the confidentiality of the student's disability, whereby professionals working with students are not permitted to discuss their disabled students with anyone unless the student can sign a waiver providing permission to the *particular* (named)

administrator/professor/instructor to discuss a *particular* issue with a *particular* person, and that person must be named as well.

**Sec.36.201 General.**

(a) Prohibition of discrimination. *No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any private entity who owns, leases (or leases to), or operates a place of public accommodation.*

**Sec.36.202 Activities.**

(a) Denial of participation. *A public accommodation shall not subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.*

(b) Participation in unequal benefit. *A public accommodation shall not afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.*

(c) Separate benefit. *A public accommodation shall not provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.*

(d) Individual or class of individuals. *For purposes of paragraphs (a) through (c) of this section, the term "individual or class of individuals" refers to the clients or customers of the public accommodation that enters into the contractual, licensing, or other arrangement.*

**Sec.36.203 Integrated Settings.**

(a) General. *A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.*

(b) Opportunity to participate. *Notwithstanding the existence of separate or different programs or activities provided in accordance with this subpart, a public accommodation shall not deny an individual with a disability an opportunity to participate in such programs or activities that are not separate or different.*

(c) Accommodations and services. (1) *Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit available under this part that such individual chooses not to accept.*

## **Confidentiality Issues**

### ***FERPA Federal Regulations***

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g; 34 CFR Part 99) is a federal law that protects the privacy of students' education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

### ***What is FERPA?***

The following information is intended to help you understand the rights of a parent under FERPA. If you require further information, please contact the U.S. Department of Education's Family Policy Compliance Office using the contact information provided below.

### ***Disclosure to Parents***

When a student turns 18 years old or enters a postsecondary institution at any age, all rights afforded to parents under FERPA transfer to the student. However, FERPA also provides ways in which schools may share information with parents *without* the student's consent. For example:

- Schools may disclose education records to parents if the student is a dependent for income tax purposes.
- Schools may disclose education records to parents if a health or safety emergency involves their son or daughter.
- Schools may inform parents if the student who is under age 21 has violated any law or its policy concerning the use or possession of alcohol or a controlled substance.
- A school official may generally share with a parent information that is based on that official's personal knowledge or observation of the student.

## **FERPA and ADA Title III Regulations**

These federal laws address the needs of the disabled individual. They are created in a generic mode, for each state to appropriately apply each law according to their needs. Note, however, that **state regulations must reflect the federal laws:**

### ***ADA Title III (Privacy Act)***

To maintain privacy information of the disabled student that is being served.

## ***Confidentiality Issues***

Such issues only refers to those individuals or organizations that are *not* involved in the support services, but are seeking information regarding students with disabilities. For any

information to be passed on regarding a student, the student *must* sign a wavier of consent *prior* to the act. However, any person who is working with the student can receive information without the waiver on the particular student in order to provide better services to that student.

### **Section 504 of the Rehabilitation Act of 1973**

***Accommodations and Supportive Services for Postsecondary Students with Disabilities*** In 1973 Congress passed Section 504 of the Rehabilitation Act of 1973 (commonly referred to as Section 504), a law that prohibits discrimination on the basis of physical or mental disability (29 U.S.C. §794). It states:

*No otherwise qualified individual with a disability in the United States . . . 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. . . .*

The Office for Civil Rights in the U.S. Department of Education (DOE) enforces regulations implementing Section 504 with respect to programs and activities that receive funding from the DOE. The Section 504 regulation applies to all recipients of this funding, including colleges, universities, and postsecondary vocational education and adult education programs. Failure by these higher-education schools to provide auxiliary aids to students with disabilities that results in a denial of a program benefit is discriminatory and prohibited by Section 504.

Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits state and local governments from discriminating on the basis of disability. The DOE enforces Title II in public, colleges, universities, and graduate and professional schools. The requirements regarding the provision of auxiliary aids and services in higher-education institutions described in the Section 504 regulation are generally included in the general nondiscrimination provisions of the Title II Regulation.

### ***Higher-Education Provision of Accommodations and Supportive Services***

The Section 504 regulation contains the following requirement relating to a postsecondary school's obligation to provide auxiliary aids to qualified students who have disabilities:

*A recipient . . . shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of excluded from participation in, or otherwise*

*subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational accommodations and supportive services for students with impaired sensory, manual, or speaking skills.*

### **Relationship of the ADA to Section 504**

Passage of the ADA and the printing of required regulations changed many parts of public disability policy previously established under Section 504 of the Rehabilitation Act of 1973.

The general requirement of Section 504, that systems not discriminate against persons with disabilities as a condition of eligibility for federal funding, still exists