

How do the ADA and Section 504 Affect Post-High Settings?

Students with disabilities, when receiving special education and related services in the public school system, are entitled to those services under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). This means that, after a student has been evaluated and the school team, including the parents, has determined the student meets the criteria of one of the 13 disability categories under IDEA, the student is entitled to all services the Individualized Education Program (IEP) team determines are needed for the student to receive a free appropriate public education (FAPE).

Once the student with disabilities graduates from school with a regular high school diploma or exits after reaching maximum age for eligibility for special education services (age 22 in Utah), IDEA no longer applies. Instead, the youth now must understand how the requirements of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Sec. 504) affects his/her ability to receive accommodations in a higher education program or the workplace.

This document is designed to answer some common questions about the rights and responsibilities of individuals with disabilities under the ADA and Section 504. Resources that provide additional information are included at the end of the document.

Common Questions About the Acts	Americans with Disabilities Act of 1990 (ADA)	Section 504 of the Rehabilitation Act of 1973	How do these laws affect postsecondary education and employment?
<p>What are the Acts and their purposes?</p>	<p>A civil rights law designed to prohibit discrimination based solely on disability in employment, public services, and accommodations. The ADA prohibits discrimination in all employment practices, including job application procedures; hiring; firing; advancement; training; compensation; and other terms,</p>	<p>A civil rights law to prohibit discrimination on the basis of disability in programs and activities, public and private, that receive Federal financial assistance.</p>	<p>Education: Title II of the ADA encompasses state-funded schools such as universities, community colleges, and vocational schools. Title III of the ADA encompasses private colleges and vocational schools. The ADA does not include private colleges and universities controlled by a religious entity. If a college or training program receives federal</p>

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	<p>conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoffs, leave, fringe benefits, and all other employment-related activities.</p>		<p>dollars, regardless of whether it is private, public, or controlled by a religious entity, it must meet the regulations of Section 504 by requiring programs to be accessible to qualified students with disabilities.</p> <p>Employment: Title I of the ADA requires employers, including religious entities, with 15 or more employees to provide an equal opportunity to all qualified individuals in job application procedures; hiring; firing; advancement; compensation; job training; and other terms, conditions, and privileges of employment. Title II applies to state and local government activities (e.g., public education, health care, employment, social services, transportation, recreation, courts, voting, and town meetings).</p>
<p>Who is protected by these Acts?</p>	<p>Any individual with a disability who: (1) has a physical or mental impairment that substantially limits one or more major life activities, without</p>	<p>Any person who: (1) has a physical or mental impairment that substantially limits one or more major life activities, without regard to the effects of</p>	<p>Education: A higher education program may not discriminate based on disability; the individual must be “otherwise qualified,” meaning he/she must meet the</p>

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	<p>regard to the effects of mitigating measures (other than regular eyeglasses or contact lenses); (2) has a record of such impairment; or (3) is regarded as having such an impairment. Further, the person must be qualified for the program, service or job.</p>	<p>mitigating measures (other than regular eyeglasses or contact lenses); (2) has a record of such an impairment or (3) is regarded as having such an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.</p>	<p>same eligibility/admission requirements as a student without a disability. Employment: The individual with a disability must be otherwise qualified for the position and be able to perform the essential functions of the position, with or without a reasonable accommodation. An employer does not have to give preference to a qualified applicant with a disability over other applicants.</p>
<p>Are there requirements for the provision of a free appropriate public education (FAPE) at the postsecondary education (college) level?</p>	<p>No. However, (1) ADA protections apply to nonreligious private schools, but not to organizational private schools, or entities controlled by a religious organization; and (2) ADA provides additional protection in combination with actions brought under Section 504. Reasonable accommodations are required for eligible students with a disability to perform essential functions of the job.</p>	<p>Yes. An "appropriate" education means an education comparable to that provided to students without disabilities. Section 504 does require development of a plan, although this written document is not mandated. Many experts recommend that a group of persons knowledgeable about the students convene and specify the agreed-upon services.</p>	<p>Education: Colleges and other postsecondary education/training programs provide no-cost accommodations to eligible students, as opposed to the specialized instruction provided to students eligible for services under IDEA. Tutoring may be available at the school, but payment for the service is generally the responsibility of the student. Employment: An employer is only required to accommodate a "known" disability; that is, a disability self-disclosed by the applicant/employee or observed by</p>

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			<p>the employer. An employer is not required to provide an accommodation that would result in an “undue hardship,” which is defined as an “action requiring significant difficult or expense” and determined on a case-by-case basis. If the accommodation is determined to pose an undue hardship, the individual with a disability may be given the option of paying a portion of the cost of the accommodation. (U.S. Equal Employment Opportunity Commission, 2001)</p> <p>Both educational programs and employment locations must be physically accessible to all individuals.</p>
<p>Do the Acts provide protections for employees with disabilities?</p>	<p>Title I requires employers, including religious entities, with 15 or more employees to provide an equal employment opportunity to all qualified individuals; Title II applies to state and local government activities (e.g., public education, employment, transportation, recreation,</p>	<p>The Act is designed to eliminate discrimination based on disability in any program or activity receiving Federal financial assistance. This applies to any corporation, partnership, private organization, or a sole proprietorship that receives</p>	<p>Education: Individuals with disabilities should not be denied the opportunity to participate in or benefit from any aid or service provided to others, including on the job training or other job-related training opportunities.</p> <p>Employment: An employer may not discriminate against an individual with a disability who is</p>

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	health care, social services, courts, voting, and town meetings).	Federal financial assistance (e.g., grants).	otherwise qualified to perform the specific job. An employer may not structure the physical plant in a way that denies access to the location in which the individual's job must be performed (e.g., locate the individual's office or work station in a location that is inaccessible to the individual because of disability).
What protections or accommodations are available under these acts?	Prohibits discrimination of any individual with a disability in postsecondary admission, academics, and research activities and employment (employers must have 15 or more employees). The Act also protects otherwise qualified employees against discrimination in being hired; retained; or promoted; or in job assignments, benefits, training, leave, and all other employment-related activities.	Recipients of Federal funds are required to provide access to appropriate education programs to otherwise eligible individuals without discrimination based on disability. The Act also protects otherwise qualified employees (employers with less than 15 employees) against discrimination in being hired; retained; or promoted; or in job assignments, benefits, training, leave, and all other employment-related activities.	Education: Accommodations are determined by individual need and may include, but are not limited to: not assessing penalties for spelling errors on papers or exams; allowing course substitutions for certain required or pre-requisite courses; allowing extra time on exams; allowing a reduced course load and extended time within which to complete degree requirements; or providing housing and accommodations for a student's personal care assistant. Auxiliary aids and services may include: qualified interpreters or other effective methods of making orally delivered materials available to individuals with hearing

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			<p>impairments; note takers; qualified readers, tape-recorded or digitally recorded texts, or other effective methods of making visually delivered materials available to individuals with visual impairments or learning disabilities; class materials in alternative formats (e.g., texts in Braille, on audiotape, or as digital files); or acquisition or modification of equipment or devices.</p> <p>Employment: Based on individual needs, reasonable accommodations may include: acquiring or modifying equipment or devices; job restructuring; part-time or modified work schedules; reassignment to a vacant position; adjusting or modifying examinations, training materials or policies; providing readers and interpreters; and making the workplace readily accessible to and usable by people with disabilities.</p>
<p>Is funding provided to implement the</p>	<p>No, but limited tax credits may be available for removing architectural or transportation</p>	<p>No. State and local jurisdictions have responsibility (meaning costs)</p>	<p>Education: Post-secondary programs may not requires students to pay for any</p>

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requirements of the Acts?	barriers. Also, many Federal agencies provide grant funds to support training and to provide technical assistance to public and private institutions.	for accommodations to remove architectural or transportation barriers. These costs must be absorbed by the college or training program or employer.	accommodations that allow physical access to classes (e.g., ramps or accessible transportation on campus), but students may be required to pay for services such as tutoring or mental health counseling. Students may also be required to purchase a copy of a text in order to have it converted to an alternative format, or pay for the text in alternative format. Employment: Employers may apply for grant funding to provide accommodations.
How is eligibility for protection under the Acts determined?	The ADA does not specify evaluation and placement procedures. It does specify provision of reasonable accommodations for eligible activities and settings. Reasonable accommodations may include, but are not limited to, redesigning equipment, assigning aides, modifying tests, redesigning services to accessibility locations, providing written communication in alternative formats, altering existing	Unlike IDEA, Section 504 requires only notice, not consent, for evaluation. Section 504 requires that information related to the disability be obtained from a variety of sources of the area of concern; that all data are documented and considered; and that decisions are made by a group of persons knowledgeable about the student, evaluation data, and placement options. Section 504 requires that students be	Education: Students must disclose disability to receive any accommodations. Students may be required to provide documentation of a “hidden” disability (e.g., learning disability, mental illness). For students with an obvious disability (e.g., blindness or wheelchair use), further documentation may not be required. Employment: An employer may not require a medical examination before making a job offer. A pre-employment inquiry about a

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	facilities, and building new facilities.	educated with their non-disabled peers to the maximum extent appropriate.	disability is only allowed if required by another Federal law or regulation (e.g., disabled veterans, Section 503 of the Rehabilitation Act [Federal contractors]). Any reason for non-hiring of an individual with a disability must be based on the individual's lack of qualification for the position, even with reasonable accommodations.
Are there due process procedures?	The ADA does not delineate specific due process procedures. Individuals with disabilities have the same remedies that are available under Title VII of the Civil Rights Act of 1964, as amended in 1991. Thus, individuals who are discriminated against may file a complaint with the relevant Federal agency. Individuals have to file an administrative complaint first, then after administrative remedies are exhausted, they can go to court. Enforcement agencies encourage informal mediation and voluntary compliance.	Section 504 requires local education agencies to provide impartial hearings for parents who disagree with the identification, evaluation, or placement of a student. Beyond this, due process details are left to the discretion of the local education agency. It is recommended that school districts and charter schools develop policy guidelines and procedures.	Individuals may file complaints under either Act if they feel they have been discriminated against or harassed because of their disability or if they have not received the accommodations the school or employer agreed to provide. Education: Students should first contact the school's disability resource center or ADA office; the next step to resolve the situation would be to use the school's internal grievance procedure, although this is not required prior to filing a complaint with the Office for Civil Rights (OCR). An OCR complaint form may be filed electronically, by mail, or by email.

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			<p>Employment: Complaints that are not settled informally may be filed with the U.S. Equal Employment Opportunity Commission (EEOC) or Utah’s Antidiscrimination & Labor Division.</p>

Resources

[Disability Rights California. \(2013\). *Rights of Students with Disabilities in Higher Education*. Retrieved from Disability Rights Education and Defense Fund \(DREDF\).](#)

[Labor Commission.](#)

[PACER Center. Retrieved from ADA Q&A: Section 504 and Postsecondary Education.](#)

[Office of Public Management.](#)

[U. S. Department of Education. Retrieved from How to File a Discrimination Complaint with the Office for Civil Rights.](#)

[U.S . Department of Justice, Civil Rights Division, Disability Rights Section.](#)

[Office for Civil Rights. Retrieved from Title 34 Education, Part 104, Nondiscrimination on the basis of handicap in programs or activities receiving Federal financial assistance.](#)

[Job Accommodation Network \(JAN\).](#)

[U.S. Equal Employment Opportunity Commission.](#)

[The ADA: Your Responsibility as an Employer.](#)

[University of Chicago. \(2016\). *Student Disability Services*.](#)

[Americans with Disabilities Act Amendments Act of 2008 \(ADA AA\).](#)