

THE ADA: THE LAW AND ITS IMPACT ON POSTSECONDARY EDUCATION

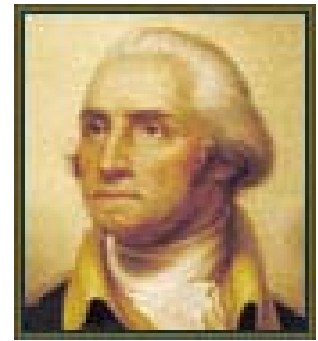
By Zavolia Willis

What is the Law?

The Americans with Disabilities Act of 1990 (ADA) is the civil rights guarantee for persons with disabilities in the United States. It provides protection for individuals from discrimination on the basis of disability. The ADA extends civil rights protections for people with disabilities to employment in the public and private sectors, transportation, public accommodations, services provided by state and local governments, and telecommunication relay services.

What is the ADA's Definition of "Person with a Disability"?

A "person with a disability" is anyone with a physical or mental impairment that substantially limits one or more major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This definition includes both people who have visible impairments —persons who are blind, deaf, or use wheelchairs— and people with less visible impairments, including psychological problems, learning disabilities, or some chronic health impairments such as epilepsy, diabetes, arthritis, cancer, cardiac problems and HIV/AIDS. (Documentation of a disability may be required). An individual is a person with disability if he/she has a disability, has a



record of a disability,
or is regarded as having a disability.

How Does the ADA Affect Institutions of Higher Education?

The ADA extends the standards for compliance set forth in Section 504 of the Rehabilitation Act of 1973 to employment practices, communications, and all policies, procedures, and practices affecting the treatment of persons with disabilities. Title II covers employment issues for public institutions. Title III covers those issues at private institutions.

The scope of Title II's coverage of disability access is all of a public postsecondary institutions' activities, including facilities, programs, and employment.

Employment Issues Under the ADA

University and college personnel must make reasonable accommodations within the employment process to ensure nondiscrimination on the basis of disability. Institutions should be prepared to accommodate persons with disabilities who are qualified to work in campus offices and departments in all aspects of employment, including recruitment, application, hiring, benefits, promotion, evaluation, and termination.

This may include:

- Recruitment of qualified persons with disabilities for open positions;
- Changes in qualifying examinations and interviewing questions;
- Changes to training materials and training policies; and
- Provision of qualified readers or interpreters, as well as assistive technology that will allow employees with disabilities to be functional within the employment setting.

Grievance Procedure and Selected ADA Requirements

Public institutions of higher education must have a clearly established grievance procedure for persons with disabilities who feel their rights have been violated under the ADA.

Institutions may not:

- Exclude persons on the basis of disability;
- Discriminate through contracting;
- Discriminate through eligibility criteria;
- Discriminate against persons who associate with persons with disabilities;
- Assess surcharges solely on persons with disabilities to cover costs of accommodations;
- Discriminate because of insurance constraints; and
- Harass or retaliate against individuals who are accessing their rights under the law or against those who assist people with disabilities in accessing their rights.

Institutions must:

- Enable students with disabilities to participate in the most integrated settings possible;
- Reasonably modify policies, practices, and procedures to avoid discrimination on the basis of disability;
- Reasonably modify policies, practices or procedures to allow the use of service animals, if discrimination would otherwise result;
- Make examinations and courses accessible;

Of particular importance in making appropriate accommodations for students with disabilities is the mandate to make reasonable modifications, as needed, in policies, practices and procedures. This obligation includes all aspects of academic and nonacademic activities, including admissions and recruitment, admission to programs, academic adjustments, housing, financial assistance, physical education and athletics, and counseling. A modification is not required if the institution can demonstrate that making the modification would fundamentally alter the nature of the service, program or activity involved, or would create an undue burden.



This Document is made possible by support from the U.S. Department of Education, Office of Special Education Programs (Cooperative Agreement # H326H010005). The opinions expressed do not necessarily reflect the views or policies of the Department of Education.