

Southwest ADA Center

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Post-Secondary Education: Self-Evaluation & Transition Plans

Regulations:

34 C.F.R. § 104.6 - Remedial action, voluntary action, and self-evaluation

(a) Remedial action.

(1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred.

(b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) Self-evaluation.

(1) A recipient shall, within one year of the effective date of this part: (i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part; (ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and (iii) Take, after consultation with

interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request: (i) A list of the interested persons consulted, (ii) A description of areas examined and any problems identified, and (iii) A description of any modifications made and of any remedial steps taken.

34 C.F.R. § 104.7 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

Case Law:

***Guckenberger v. Boston University*, 974 F.Supp. 106 (D.Mass. 1997).**

- University had offered no meaningful appellate review of a decision to reject a requested accommodation for students with learning disabilities. The students were informed in writing that they must ask the President of the University, who made the original determination, to reconsider his decision.
- School had a grievance procedure that involved an independent compliance officer that is in the student handbook. Court rejected it because 1) the grievance procedure is for those that have physical disabilities 2) no students seeking reconsideration of a denial were advised to pursue the grievance procedure 3) court doubted the officer had the authority to reverse the president of the university 4) most officials were unaware of this 504 grievance procedure.
- No private right of action to enforce 504 regulations guaranteeing due process.

Post-Secondary Education: Facilities

- [Regulations](#)
- [Case Law](#)

Regulations:

34 C.F.R. § 104.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

34 C.F.R. § 104.22 Existing facilities.

(a) Accessibility. A recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) Methods. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of Sec. 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(c) Small health, welfare, or other social service providers. If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within

three years of the effective date of this part, but in any event as expeditiously as possible.

(e) Transition plan. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full accessibility in order to comply with paragraph (a) of this section and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

45 C.F.R. § 104.23 New construction.

(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) Conformance with Uniform Federal Accessibility Standards.

(1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the [Uniform Federal Accessibility Standards](#)

(UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

Case Law:

Department of Education's Office for Civil Rights Cases:

- [California State University - Hayward](#) (OCR Case No. 09042016) - Inadequate Braille signage
- [Jefferson Community College](#) (OCR Case No. 04912089) - Many of its buildings were inaccessible.
- [North Park University](#) (OCR Case No. 05046002) - Reassignment of classes due to inaccessible existing buildings.
- [Providence College](#) (OCR Case No. 01932007) - College held commencement at an inaccessible off-campus facility.
- [University of Arizona](#) (OCR Case No. 08932012) - Inaccessible theatre building.
- [University of Massachusetts - Amherst](#) (OCR Case No. 01932011) - University did not provide adequate accessible parking spaces and a cafeteria was not accessible.
- [University of North Carolina - Pembroke](#) - Inaccessible observatory. School had relied on architects who determined making the observatory accessible would be an undue burden. Defense not available to new construction.
- [Yale University](#) (OCR Case No. 01912040) - University's performances was inaccessible because the building was inaccessible.

Post-Secondary Education: Academic Adjustments

- [Regulations](#)
- [Case Law](#)
- [Articles](#)

Regulation:

34 C.F.R. § 104.44; 45 C.F.R. § 84.44 - Academic adjustments

(a) Academic requirements - A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) Other rules - A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) Course examinations - In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) Auxiliary aids

(1) A recipient to which this subpart applies 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 auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Case Law:

[Powell v. National Bd. of Medical Examiners](#), 364 F.3d 79 (2nd Cir. 2004).

- Allowing a medical student to proceed with the latter stages of medical school without first passing a licensing exam would fundamentally alter the nature of the program.
- When reviewing the substance of a genuinely academic decision, courts should accord the faculty's professional judgment great deference.

[Falcone v. University of Minn.](#), 388 F.3d 656 (8th Cir. 2004).

- An educational institution does not have to lower its standards for a professional degree, for example, by eliminating or substantially modifying its clinical training requirements.

[Zukle v. Regents of University of California](#), 166 F.3d 1041 (9th Cir. 1999).

- While the ultimate determination of whether an individual is otherwise qualified must be made by the court, the court will extend judicial deference "to the evaluation made by the institution itself, absent proof that its standards and its application of them serve no purpose other than to deny an education to handicapped persons."
- Deference should also be accorded to an educational institution's determination that a reasonable accommodation is not available. A court's duty is to first find the basic facts, giving due deference to the school, and then to evaluate whether those facts add up to a professional, academic judgment that reasonable accommodation is not available.
- Reasonableness is not a constant. To the contrary, what is reasonable in a particular situation may not be reasonable in a different situation, even if the situational differences are relatively slight. The court must evaluate a student's request for accommodation in light of the totality of the circumstances.

[Kaltenberger v. Ohio College of Podiatric Medicine](#), 162 F.3d 432 (6th Cir. 1998).

- College did not fail to reasonably accommodate plaintiff's learning disability by refusing to waive its policy regarding the retaking of examinations, especially in light of the other accommodations which were made for her.
- When reviewing the substance of academic decisions, courts "should show great respect for the faculty's professional judgment." The faculty must have the widest range of discretion in making judgments as to the academic performance of students and their entitlement to promotion or graduation.
- Courts must also give deference to professional academic judgments when evaluating the reasonable accommodation requirement.
- There is no obligation to offer accommodation simply because the school knew the student was seeking testing for a learning disability

Department of Education's Office for Civil Rights Resolution Letters

- [Bowling Green](#) (OCR Case No. 05982143) - Debate whether student's requested modifications lowered school's essential requirements for speech language pathology graduate program .
- [California Community Colleges](#) (OCR Case No. 09976001) - A compliance review focused on the status of California Community Colleges in meeting their obligation under Title II and Section 504 to provide students with visual impairments access to print and computer-based information.
- [City College of San Francisco](#) (OCR Case No. 09972145) - The obligation to provide textbooks in a meaningful alternate format.
- [Cal State - Los Angeles](#) (OCR Case No. 09972002) - Access to public library resources by visually impaired individuals
- [Cal State - Long Beach](#) (OCR Case No. 09992041) - Stresses the importance of not having one centralized location for adaptive technology due to the ADA's mandate to integrate students with disabilities into mainstream education programs.
- [Depaul University](#) (OCR Case No. 05892029) - Readmissions committee discriminated by relying on stereotypical assessments of the student's learning abilities and failed to explore the possibility of academic adjustments.
- [Highline Community College](#) (OCR Case No. 10052007) - College provided meaning-for-meaning captioning instead of word-for-word real time captioning requested. Paralegal student could not follow along lecture and class results as a result. The accommodation was not effective.
- [Los Rios Community College District](#) (OCR Case No. 09932214) - College system agreed to develop written procedures to facilitate requests for academic adjustments and auxiliary aids, to make assistance available to resolve any problems students encounter with instructors regarding the provision of adjustments and aids, to make printed materials and computers accessible by providing auditory, tactile and enlarged print materials, and to make its physical education courses, library and student employment services accessible to students with visual impairments.

- [Loyola Marymount](#) (OCR Case No. 09912157) - Detailing the requirements to purchase equipment and provide academic adjustments in note-taking and course examinations.
- [Naropa Institute](#) (OCR Case No. 08932041) - School limited the availability of interpreter services and then tried to have the student bear part of the cost of interpreter services.
- [New College of California](#) (OCR Case No. 09932063) - Financial considerations do not relieve the obligation to provide interpreter services when there were no alternative means by which comparable access could be achieved.
- [Tacoma Community House](#) (OCR Case No. 10934001) - School did not have any procedure to provide interpreter services... nor did they provide them.
- [University of California - Davis](#) (OCR Case No. 09922101) - School made the provision of interpreters contingent on the student following certain procedures. This practice may violate Section 504 because it turns a right into a privilege.
- [University of Laverne](#) (OCR Case No. 09962148) - A letter emphasizing the requirement of having a written procedure governing requests by students with disabilities for academic adjustments needed to accommodate their disabilities.
- [University of North Carolina - Greensboro](#) (OCR Case No. 11052088) - School refused to modify essential program requirements in its teaching program.

Post-Secondary Education: Admissions

- [Regulations](#)
- [Case Law](#)

Regulations:

34 C.F.R. § 104.42 - Admissions and recruitment

(a) General - Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) Admissions - In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless

(i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and

(ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Director to be available.

(3) Shall assure itself that

(i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);

(ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and

(iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception. - When a recipient is taking remedial action to correct the effects of past discrimination pursuant to [Sec. 104.6\(a\)](#) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to [Sec. 104.6\(b\)](#), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) Validity studies - For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

45 C.F.R. § 84.42 - Admissions and recruitment

(a) General - Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) Admissions - In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless

(i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and

(ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Director to be available.

(3) Shall assure itself that

(i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);

(ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and

(iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception. - When a recipient is taking remedial action to correct the effects of past discrimination pursuant to [Sec. 84.6\(a\)](#) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to [Sec. 84.6\(b\)](#), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, Provided, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) Validity studies - For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

Case Law:

Doe v. New York University, 666 F.2d 761 (2nd Cir. 1981).

- In determining whether a handicapped person is "otherwise qualified" for admission to an institution of higher education, a court must also consider other factors not normally encountered in evaluating ability to satisfy employment standards or to qualify for a job.
- The first of these is a court's limited ability, as contrasted to that of experienced educational administrators and professionals, to determine an applicant's qualifications and whether he or she would meet reasonable standards for academic and professional achievement established by a university or a non-legal profession... considerable judicial deference must be paid to the evaluation made by the institution itself, absent proof that its standards and its application of them serve no purpose other than to deny an education to handicapped persons.
- Another factor which must be taken into account is that the qualification of a handicapped person for admission to an institution turns not only on whether he or she meets its reasonable standards but whether the individual... is as well qualified despite the handicap as others accepted for one of the limited number of openings. In performing the difficult task, where there are more qualified applicants than places available, of making comparative judgments to determine which are the most promising candidates, the institution is not required to accept a qualified handicapped person if the handicap renders that individual less qualified than other qualified applicants.
- in a suit under § 504 the plaintiff may make out a prima facie case by showing that he is a handicapped person under the Act and that, although he is qualified apart from his handicap, he was denied admission or employment because of his handicap. The burden then shifts to the institution or employer to rebut the inference that the handicap was improperly taken into account by going forward with evidence that the handicap is relevant to qualifications for the position sought. The plaintiff must then bear the ultimate burden of showing by a preponderance of the evidence that in spite of the handicap he is qualified and, where the defendant claims and comes forward with some evidence that the plaintiff's handicap renders him less qualified than other successful applicants, that he is at least as well qualified as other applicants who were accepted.

Halasz v. University of New England, 816 F.Supp. 37 (D. Me. 1993)

- Plaintiff had complained that a university application had impermissibly made inquiries into disability status for its learning disability program.
- "When a university operates a program specifically for the handicapped, it clearly needs to know about an applicant's handicaps before it can make a decision about admission to the program, for the program may be

appropriate for some handicapped individuals and not for others. Section 504 is designed in part to assure that handicapped applicants and students are not, because of their handicaps, denied the benefits of programs offered by federally subsidized universities to nonhandicapped students. None of the purposes of the statute would be served by enforcing the inquiry prohibition when a university offers a program available only to handicapped students and a handicapped person seeks to participate in that program."

Department of Education's Office for Civil Rights Cases

- [Depaul University](#) (OCR Case No. 05892029) - Readmissions committee discriminated by relying on stereotypical assessments of the student's learning abilities and failed to explore the possibility of academic adjustments.
- [Pepperdine University](#) (OCR Case No. 09942175) - University failed to take her disabilities into account in reaching a decision regarding her petitions for readmission to their law school.
- [SUNY - Brooklyn](#) (OCR Case No. 02922004) - Medical school had discriminated by weighing differently MCAT scores taken under non-standard conditions.
- [Thomas M. Cooley Law School](#) (OCR Case No. 05912065) - Illegal preadmission disability inquiry on the application form. Admissions committee regarded the complainant as handicapped when they denied her admission to the Law School based on their belief that because of her mental illness she was not well enough to attend school.
- [University of Virginia](#) (OCR Case No. 11962006) - Law school does not have to waive consideration of LSAT scores in admission of a student with a disability as an accommodation.

Post-Secondary Education: Assistance

- [Regulations](#)
- [Case Law](#)

Regulations:

34 C.F.R. § 104.46 - Financial and employment assistance to students

(a) Provision of financial assistance.

(1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not

(i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or

(ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) Assistance in making available outside employment - A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate [Subpart B](#) if they were provided by the recipient.

(c) Employment of students by recipients - A recipient that employs any of its students may not do so in a manner that violates [Subpart B](#).

45 C.F.R. § 84.46 - Financial and employment assistance to students

(a) Provision of financial assistance.

(1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not

(i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or

(ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) Assistance in making available outside employment - A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate [Subpart B](#) if they were provided by the recipient.

(c) Employment of students by recipients - A recipient that employs any of its students may not do so in a manner that violates [Subpart B](#).

Case Law:

Department of Education's Office for Civil Rights Cases

[Florida Department of Education](#) (OCR Case No. 04952114) - University system must consider students who have less than a full-time course load due to a disability in disbursing scholarships even though the scholarship requirements call for students with a full-time course load.

Post-Secondary Education: Housing

Regulations:

34 C.F.R. § 104.45 - Housing

(a) Housing provided by the recipient - A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in [Subpart C](#), such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) Other housing - A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

45 C.F.R. § 84.45 - Housing

(a) Housing provided by the recipient - A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in [Subpart C](#), such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) Other housing - A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

Department of Education's Office for Civil Rights Resolution Letters

- [Grand Valley State University](#) - Newly constructed student housing was inaccessible.
- [North Park University](#) (OCR Case No. 05046002)

Post-Secondary Education: Nonacademic Services

- [Regulations](#)
- [Case Law](#)

Regulations:

34 C.F.R. § 104.47 - Nonacademic services

(a) Physical education and athletics

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of [104.43\(d\)](#) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) Counseling and placement services - A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) Social organizations - A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

45 C.F.R. § 84.47 - Nonacademic services

(a) Physical education and athletics

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education

courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of [84.43\(d\)](#) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) Counseling and placement services - A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) Social organizations - A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Case Law:

[Knapp v. Northwestern Univ.](#), 101 F.3d 473 (7th Cir. 1996).

- Student-athlete sued his university for not allowing him to play intercollegiate basketball due to his heart condition. Court found that the plaintiff was not "otherwise qualified" to play intercollegiate basketball at Northwestern.
- Although a disability is not a permissible ground for assuming an inability to function in a particular context, the disability is not thrown out when considering if the person is qualified for the position sought. Legitimate physical qualifications may in fact be essential to participation in particular programs.
- A significant risk of personal physical injury can disqualify a person if the risk cannot be eliminated. But more than merely an elevated risk of injury is required before disqualification is appropriate. Any physical qualification based on risk of future injury must be examined with special care if the Rehabilitation Act is not to be circumvented, since almost all disabled individuals are at a greater risk of injury.
- Section 504 prohibits authorities from deciding without significant medical support that certain activities are too risky for a disabled person. Decisions of

this sort cannot rest on paternalistic concerns. In regard to cases involving risk of future injury, a school's perception of the threat of such injury cannot be based on unfounded fears or stereotypes; it must be based on objective evidence

- Medical determinations of this sort are best left to team doctors and universities as long as they are made with reason and rationality and with full regard to possible and reasonable accommodations. The place of the court is to make sure that the decisionmaker has reasonably considered and relied upon sufficient evidence specific to the individual and the potential injury, not to determine on its own which evidence it believes is more persuasive.

Post-Secondary Education: Treatment of Students

- [Regulations](#)
- [Case Law](#)

Regulation:

34 C.F.R. § 104.43; 45 C.F.R. 84.43 - Treatment of students; general

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

Case Law:

Department of Education's Office of Civil Rights Cases

- [Bluffton University](#) (OCR Case No. 15042042) - University did not have adequate due process and grievance procedures in withdrawing student from the university.
- [California State University - Hayward](#) (OCR Case No. 09042016) - University did not provide Braille signage and had some mishaps with its shuttle bus transportation.
- [DeSales University](#) (OCR Case No. 03042041) - Process that the university used in denying housing to a student did not comply with Section 504 and the university had no grievance procedure for complaints of disability discrimination.
- [Jefferson Community College](#) (OCR Case No. 04912089) - Many of its buildings were inaccessible.

- [Providence College](#) (OCR Case No. 01932007) - College held commencement at an inaccessible off-campus facility.
- [San Diego Community College District](#) (OCR Case No. 09982154) - The complainant alleged that college district had discriminated against her on the basis of her psychiatric disability. The OCR found that the particular disciplinary process that was applied excluded the complainant from the district's educational program based on her status as an individual with a disability in violation of Section 504 and Title II of the ADA.
- [University of Arizona](#) (OCR Case No. 08932012) - Inaccessible theatre building.
- [University of Massachusetts - Amherst](#) (OCR Case No. 01932011) - University did not provide adequate accessible parking spaces and a cafeteria was not accessible.
- [University of Illinois at Chicago](#) (OCR Case No. 05-04-2033) - University had a comparable resolution process to OCR.
- [Yale University](#) (OCR Case No. 01912040) - University's performances was inaccessible because the building was inaccessible.

Department of Justice Settlement Agreements

- [University of Chicago](#)