

# **RIGHTS OF MASSACHUSETTS COLLEGE AGE STUDENTS WITH DISABILITIES**

**Prepared by the Mental Health Legal Advisors Committee  
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## **What rights to postsecondary students with disabilities have?**

Students with disabilities have rights to accommodations in postsecondary schools under Section 504 and Title II of the Americans with Disabilities Act (ADA). However, the requirements of colleges to serve students with disabilities differ from those of elementary and secondary school districts. Knowing these distinctions is essential for any student with a disability entering a postsecondary school.<sup>1</sup>

Primarily, post-secondary schools must provide appropriate academic adjustments free of charge to students with disabilities. This is different from Free and Appropriate Public Education, or FAPE that school districts must provide. Under FAPE requirements, school districts must strive to meet the needs of students with disabilities as well as those of students without disabilities, providing related aids and services that are necessary to accomplish this goal. Postsecondary schools, however, are required to provide adjustments with the goal of ensuring that they do not discriminate against students on the basis of disability.<sup>2</sup> Practically, this means that postsecondary schools are not required to be as active and involved with students who have disabilities.

Furthermore, postsecondary schools are not required to identify students with disabilities or assess their needs. Students must actively inform their school of their disability and need for academic adjustments. Students are responsible for requesting academic adjustments in due time and following the school's stated procedures. If students cannot find information on how to request academic adjustments, they should ask an admissions officer or counselor who may be able to help. Students will likely need to show documented proof of their disability to obtain academic adjustments.<sup>3</sup>

## **How do schools determine appropriate academic adjustments?**

Postsecondary schools must determine appropriate academic adjustments based on each individual student's needs. However, schools do not have to lower or substantially modify essential academic requirements. They do not have to make modifications that would fundamentally alter the nature of a service, program or activity or that would result in undue financial or administrative burdens.<sup>4</sup> Postsecondary schools also do not have to

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<sup>1</sup> U.S. Department of Education, Office for Civil Rights, *Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities* 1 (2007), <http://www2.ed.gov/about/offices/list/ocr/transition.html>.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

develop a plan similar to the IEP for students with disabilities.<sup>5</sup> However, schools should make efforts to work collaboratively with the student to find an adjustment that will benefit the student.

### **What are potential academic adjustments?**

Academic adjustments may include, but are not limited to the following:<sup>6</sup>

- Reduction of course load;
- Priority registration;
- Substitution of courses;
- Provision of in-class assistance, such as note-takers or recording devices;
- Extension of testing time.

### **What grievance procedures must schools have?**

Schools that receive federal funds, or enroll students who receive federal funds, must have due process grievance procedures for disability-based complaints. They must also employ a disability compliance officer or disability services coordinator to handle complaints.<sup>7</sup> Students whose schools are not accommodating their disability even after the grievance process could contact the following agencies:

- Office of Civil Rights at the U.S. Department of Education, <http://www2.ed.gov/about/offices/list/ocr/index.html>
- Massachusetts Office of Disability, <http://www.mass.gov/mod>
- Disability Law Center of Massachusetts, <http://www.dlc-ma.org/>

### **What access to mental health treatment should students have?**

Students with mental health-related disabilities, or non-disabling mental health needs should be sure to seek proper treatment on campus. Counseling services can often be accessed through the school's health center, though some schools have separate counseling centers. Students who are on their parents' health insurance should be aware that their parents may find out from the insurer that they are receiving mental health services.<sup>8</sup> Furthermore, students with mental health disabilities can request academic adjustments using the same process as other students with disabilities. They, too, will likely need to prove their disability status with documentation such as an evaluation by a mental health professional.

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<sup>5</sup> *Id.* at 3.

<sup>6</sup> U.S. Department of Education, *Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities*, <http://www2.ed.gov/about/offices/list/ocr/transition.html>.

<sup>7</sup> Bazelon Center for Mental Health Law, *Campus Mental Health: Know Your Rights!* 10, [http://www.mdtransition.org/uploadedfiles/YourMind-YourRights\[1\].pdf](http://www.mdtransition.org/uploadedfiles/YourMind-YourRights[1].pdf).

<sup>8</sup> *Id.* at 2.

Throughout treatment in college, students should be aware that their school may face liability for the actions of students.<sup>9</sup> Generally, conversations between students and counselors should be confidential, but the counselor may send a student to hospital or notify parents, school administrators and insurers if he or she thinks the student is a danger to himself or others.<sup>10</sup>

### **What rights do students have when taking leaves of absence?**

Some schools respond to students facing mental health crises (including being hospitalized or threatening to hurt themselves) by requiring them to take a leave of absence or to evict them from student housing.<sup>11</sup> However, according to legal standards schools may only require a student to take a leave of absence if, even with accommodations and supports, the student is unsafe at school and is unable to meet academic standards.<sup>12</sup>

Furthermore, schools must conduct an individualized assessment of the risk the student poses to himself and the viability of reducing such a risk with accommodations or other supports. In determining this risk, schools can access the student's mental health records to the extent necessary. However, they do not have unlimited access; students can limit the specific dates of records released to the school. Students also have the right to review and approve records and information that the school requests.<sup>13</sup>

Schools must conduct this assessment before imposing a leave of absence or removal from student housing.<sup>14</sup> If schools do decide to take either of these actions, the student is entitled to due process rights.<sup>15</sup>

What if a student believes his or her privacy rights have been violated?

A student who believes his or her privacy rights have been violated may file a grievance with the school or a complaint with the Department of Education's Family Policy Compliance Office at <http://www.ed.gov/policy/gen/guid/fpc/index.html>.<sup>16</sup>

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<sup>9</sup> See *Shin v. Massachusetts Inst. of Technology*, 2005 WL 1869101, \*9 (Mass. Super., 2005).

<sup>10</sup> Bazelon Center for Mental Health Law, *Campus Mental Health: Know Your Rights!* 7, [http://www.mdtransition.org/uploadedfiles/YourMind-YourRights\[1\].pdf](http://www.mdtransition.org/uploadedfiles/YourMind-YourRights[1].pdf).

<sup>11</sup> *Id.* at 12.

<sup>12</sup> *Id.* at 13.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 8.

**Resources:**

Office for Civil Rights, Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities,  
<http://www.ed.gov/about/offices/list/ocr/transition.html>

Bazelon Center for Mental Health Law, Campus Mental Health: Know Your Rights (2008), <http://www.bazelon.org/121/rightsguide.htm>