



Brigham Young University–Hawaii
Office of Compliance & Ethics Research Memo
Section 504 of the Rehabilitation Act of 1973 (Section 504)

Law/Act:	Section 504 of the Rehabilitation Act of 1973 (Section 504)	
U.S. Code Citation:	29 U.S.C. § 794	
Code of Federal Regulations Citation:	34 C.F.R. pt. 104	
Responsible Regulator:	Assistant Secretary for Civil Rights of the Department of Education	
BYU–Hawaii Responsible Officer:	Section 504 Coordinator	
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I. PURPOSE

Section 504 of the Rehabilitation Act of 1973 (Section 504) is intended to eliminate discrimination against individuals with disabilities in programs or activities that receive federal financial assistance.¹

II. HISTORY

On September 26, 1973, Congress passed the Rehabilitation Act of 1973, largely in response to civil rights activists advocating protections for persons with disabilities.² Section 504 has been amended several times over the years to better define “program or activity,”³ to replace the term “handicap” with “disability,”⁴ and to make minor updates to the act.⁵

III. APPLICABILITY TO BYU–HAWAII

Section 504 requirements apply generally to all the operations of a college, university, or postsecondary institution that receives federal financial assistance from the U.S. Department of Education (ED).⁶ As a recipient of federal financial assistance, BYU–Hawaii must comply with Section 504.⁷

IV. REQUIREMENTS

A. Definition

For purposes of Section 504 and this memo, the term “person with a disability” refers to (1) one with a physical or mental impairment that substantially limits one or more major life activities of the individual,

¹ 29 U.S.C. § 794(a) (2016); 34 C.F.R. § 104.1 (2017).

² Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355.

³ Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28, § 4.

⁴ Rehabilitation Act Amendments of 1992, Pub. L. No. 102-569, 106 Stat. 4344.

⁵ See, e.g., Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. No. 95-602, 92 Stat. 2955 (adding “and programs” to the section heading); Handicapped Programs Technical Amendments Act of 1988, Pub. L. No. 100-630, 102 Stat. 3289 (making technical modifications to Section 504).

⁶ See 29 U.S.C. § 794(a)–(b) (prohibiting disability-based discrimination under any program or activity that receives federal financial assistance); 34 C.F.R. § 104.2 (stating that each recipient of federal financial assistance from ED must follow the regulations outlined in part 34); *id.* § 104.3(f) (defining “recipient”); *id.* § 104.3(k)(2)(i) (defining “program or activity”).

⁷ BRIGHAM YOUNG UNIVERSITY—HAWAII, ACCOMMODATION OF PERSONS WITH DISABILITIES POLICY.



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(2) one who has a record of such an impairment, or (3) one who is regarded as having such an impairment.⁸

B. General Requirements

Institutions subject to Section 504 must not exclude, deny benefits to, or otherwise discriminate against qualified persons with disabilities on the basis of their disability.⁹ Specific acts of discrimination include, but are not limited to, the following:¹⁰

1. *Denying an opportunity* to participate in or benefit from any aid, benefit, or service provided;
2. Affording an opportunity to participate in or benefit from any aid, benefit, or service that is *not equal* to that afforded other individuals;
3. Providing a *less effective* aid, benefit, or service;
4. Providing *different or separate* aid, benefits, or services (unless such action is necessary to provide aid, benefits, or services that are as effective as those provided to others);
5. *Limiting the enjoyment* of any right, privilege, advantage or opportunity enjoyed by others receiving an aid, benefit, or service;
6. *Selecting a facility's location* with the purpose or effect of excluding persons with disabilities, denying them benefits, or subjecting them to discrimination; and
7. Using criteria or administration methods that have a *discriminatory effect or purpose*.

1. Assurance

A university that receives federal financial assistance must submit an assurance that the university's program or activity will comply with Section 504.¹¹ The assurance obligates the university during the period it receives federal financial assistance.¹²

⁸ 34 C.F.R. § 104.3(j) (defining "handicapped person"). According to guidance from the Department of Education, "the term 'handicapped person' [. . .] does not include an individual who is currently engaging in illegal use of drugs." However, if a person is no longer using drugs and is undergoing treatment for drug addiction, he or she could "be considered a 'handicapped person.'" *Nondiscrimination in Employment Practices in Education*, U.S. DEP'T OF EDUC., <https://www2.ed.gov/about/offices/list/ocr/docs/hq53e8.html>, (last modified Oct. 15, 2015).

⁹ 34 C.F.R. § 104.4(a). Failing to make university websites accessible to persons with disabilities has been interpreted as a violation of Section 504. See *Nondiscrimination on the Basis of Disability*, 75 Fed. Reg. 43,460, 43,464 (July 26, 2010) (stating that "there seems to be little debate that the Web sites of recipients of federal financial assistance are covered by section 504 of the Rehabilitation Act").

¹⁰ 34 C.F.R. § 104.4(b)(1)(i)-(iv), (1)(vii), (4), (5).

¹¹ *Id.* § 104.5(a). This assurance must be submitted on a form specified by the assistant secretary of ED and is typically contained in the University's Program Participation Agreement with ED. *Id.*; [FEDERAL STUDENT AID HANDBOOK Chapter 1 pg. 2-15 \(2018-2019\)](#).

¹² *Id.* § 104.5(b)(3).



2. Section 504 Coordinator

Additionally, a university that employs at least fifteen people must designate at least one employee to coordinate the university's efforts to comply with Section 504.¹³

3. Notices

A university that employs fifteen or more people must notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability.¹⁴ The notification must identify the Section 504 coordinator and state, where appropriate, that the university does not discriminate in admission, access, treatment, or employment.¹⁵ Universities can make notification through posting notices, publishing in newspapers and magazines, placing notices in university publications, and distributing written communications.¹⁶ If a university makes recruitment materials or other publications available to participants, beneficiaries, applicants, or employees, it must include the notification in those materials.¹⁷ Importantly, the university must adopt and implement procedures to ensure that anyone can find out about the existence and location of accessible services, activities, and facilities.¹⁸

4. Grievance Procedures

A university that employs fifteen or more individuals must adopt grievance procedures that incorporate appropriate due process standards and provide for prompt and equitable complaint resolution regarding persons with disabilities.¹⁹

5. Recordkeeping

Universities must maintain records "in such form and containing such information, as the responsible Department official [. . .] may determine to be necessary[.]" and such records must be available to department officials.²⁰ Universities must submit compliance reports to the responsible department official, as determined necessary by that official.²¹

C. Admissions

Qualified persons with disabilities may not be denied admission or be subjected to discrimination in admission or recruitment processes on the basis of disability.²² A university must not use any admissions

¹³ *Id.* § 104.7(a). This person is generally referred to as an institution's Section 504 coordinator. The Section 504 coordinator should be similar to a Title IX coordinator in terms of independence and full-time designation. See Office for Civil Rights, *Dear Colleague Letter: Title IX Coordinators*, U.S. DEPT EDUC. 2 n.5 (Apr. 24, 2015), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>.

¹⁴ 34 C.F.R. § 104.8(a).

¹⁵ *Id.*

¹⁶ *Id.* § 104.8(a).

¹⁷ *Id.* § 104.8(b). Notices can be inserted in existing materials or included in revised and reprinted materials. *Id.*

¹⁸ 34 C.F.R. § 104.22(f).

¹⁹ *Id.* § 104.7(b). These procedures are not necessary in regards to complaints from applicants for employment or admission. *Id.*

²⁰ *Id.* § 100.6(b)–(c);

²¹ *Id.* § 100.6(b).

²² *Id.* § 104.42(a).



test that has a disproportionately adverse effect on students with disabilities.²³ Furthermore, the university must ensure that

1. Admissions tests are administered in a way that accurately reflects the applicant's aptitude rather than the applicant's disability,
2. Admissions tests designed for persons with disabilities are offered as often as are other admissions tests, and
3. Admissions tests are administered in facilities accessible to persons with disabilities.²⁴

Universities may not make preadmission inquiries as to whether an applicant has a disability, but they may confidentially inquire about disabilities that may require accommodation.²⁵

D. Financial Assistance

When a university provides financial assistance to qualified individuals with disabilities, the university may not, on the basis of the disability, do the following:

1. Provide less assistance than it would to nondisabled persons,
2. Limit eligibility for assistance,
3. Otherwise discriminate, or
4. Assist any entity or person that provides assistance in a manner that discriminates against qualified persons with disability on the basis of that disability.²⁶

E. General Academic Accommodations

Students with disabilities may not, on the basis of a disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under academic, research, occupational training, housing, health insurance, counseling, financial aid, and other services outlined in the law.²⁷ Universities may not, on the basis of a disability, exclude any qualified person with a disability from any course or other aspects of its educational experience.²⁸ Universities must use the most integrated settings they can in their programs and activities.²⁹

Universities must modify their academic requirements as necessary to ensure that the requirements do not discriminate against, or have the effect of discrimination on, a qualified student with a disability on the basis of the disability.³⁰ Modifications may include changing the length of time permitted for completing requirements and substituting specific courses mandatory for requirement completion.³¹

²³ *Id.* § 104.42(b)(2). A university must not use such a test unless such test has been validated as a predictor of success in the education program in question and alternative tests are not available. *Id.*

²⁴ *Id.* § 104.42(b)(3).

²⁵ *Id.* § 104.42(b)(4). A university may also invite applicants to indicate whether and to what extent they have a disability if the university is working to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity, but such invitation must meet certain requirements. *Id.* § 104.42(c).

²⁶ *Id.* § 104.46(a)(1)(i)–(ii).

²⁷ *Id.* § 104.43(a).

²⁸ *Id.* § 104.43(c).

²⁹ *Id.* § 104.43(d).

³⁰ *Id.* § 104.44(a). If the university demonstrates an academic requirement to be essential to the instruction, or if an academic requirement is directly related to a licensing requirement, that requirement will not be regarded as discriminatory. *Id.*

³¹ *Id.* § 104.44(a).



Universities may not impose rules on qualified students with disabilities that would limit their participation in the program or activity.³²

F. Nonacademic Services

Universities may not discriminate on the basis of a disability in providing physical education courses and athletics as well as in counseling and placement services; however, universities may offer separate or different opportunities in accordance with federal regulations.³³ A university that provides extracurricular activities, such as intramural athletics, must provide equal opportunity to students with disabilities.³⁴ If a university provides significant assistance to a social organization (e.g., a fraternity or sorority), it must make sure that the membership practices of the organization do not permit discrimination on the basis of a disability.³⁵

G. Testing Accommodations

Like the Americans with Disabilities Act (ADA), Section 504 requires a university, during course examinations, to provide methods that will accurately measure a “student’s achievement in the course,” rather than reflecting that student’s disability.³⁶ However, if the test claims to measure sensory, manual, or speaking skills, no such accommodation must be made.³⁷ Universities should provide students with disabilities with necessary auxiliary aids (e.g., taped texts, interpreters, or readers).³⁸

H. Employment

Qualified persons with disabilities may not be discriminated against, on the basis of disability, in recruitment, hiring, promotion, rates of pay, job assignment, leaves of absence, fringe benefits, training, or employer-sponsored activities.³⁹ A university must make reasonable accommodations (e.g., making facilities accessible or modifying work schedules) to known physical or mental limitations of otherwise qualified persons with disabilities unless doing so would impose an undue hardship.⁴⁰ Universities may not deny employment to a qualified person with a disability because of the need to make reasonable accommodation for the applicant/employee.⁴¹

Universities may not use any employment tests or selection criteria that screen out or tend to screen out persons with disabilities unless the score or criterion is evidently job-related for that position or

³² *Id.* § 104.44(b). Specifically, an institution may not prohibit tape recorders in classrooms or guide dogs in campus buildings. *Id.*

³³ *Id.* § 104.47(a)–(b); see *id.* § 104.43(d) (outlining relevant federal regulations).

³⁴ *Id.* § 104.47(a)(1); U.S. Dep’t of Educ., Office for Civil Rights, *Dear Colleague Letter: Extracurricular Activities* (Jan. 25, 2013), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf>; see U.S. Dep’t of Educ., Office for Civil Rights, *Dear Colleague Letter: Students with Disabilities in Extracurricular Athletics (January 25, 2013) Background and Fast Facts* (2013), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201301-504.pdf> (clarifying that the guidance on extracurricular athletics applies to postsecondary schools).

³⁵ 34 C.F.R. § 104.47(c).

³⁶ *Id.* § 104.44(c).

³⁷ *Id.* § 104.44(c).

³⁸ *Id.* § 104.44(d)(2).

³⁹ *Id.* § 104.11(a)(1), (b)(1)–(9).

⁴⁰ *Id.* § 104.12(a)–(b). In determining whether an accommodation would impose an undue hardship, the size of the institution and its budget and the nature and cost of the needed accommodation are relevant. 34 C.F.R. § 104.12(c)(1)–(3).

⁴¹ *Id.* § 104.12(d).



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unless alternative job-related tests or criteria are evidently not available.⁴² Universities that use tests for employment purposes must make sure that the test results accurately reflect the applicant's or employee's job skills and not his or her impaired sensory, manual, or speaking skills.⁴³ Pre-employment medical examinations and inquiries as to whether or not an individual has a disability and as to the nature or severity of that disability are prohibited; however, universities may ask pre-employment questions about an individual's ability to perform functions related to the job.⁴⁴

All employment-related requirements under Section 504 apply to student employees.⁴⁵ If a university assists another entity in providing employment opportunities to its students, it must make sure that such opportunities, as a whole, are made available in accordance with Section 504.⁴⁶

I. Facilities

Persons with disabilities must not be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination at a university because facilities are inaccessible to or unusable by them.⁴⁷ Importantly, universities do not need to make each existing facility or every part of a facility accessible to and usable by persons with disabilities, as long as the university's programs and activities, when viewed in their entirety, are readily accessible.⁴⁸ Universities may establish or maintain compliance by such methods as redesigning equipment, reassigning classes or other services to accessible buildings, altering existing facilities, and constructing new facilities.⁴⁹

In the case of new construction or alterations, a university must ensure that the facility or part of the facility is readily accessible to and usable by persons with disabilities.⁵⁰ Facilities must be designed, constructed, and altered in accordance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS).⁵¹ However, the Department of Education ("ED") is planning to revise its Section 504 regulations to formally adopt the U.S. Department of Justice's 2010 ADA Standards for Accessible Design (2010 ADA Standards) and, thus, will permit institutions to meet the 2010 ADA Standards instead of UFAS as a means of complying with Section 504.⁵²

⁴² *Id.* § 104.13(a)(1)–(2).

⁴³ *Id.* § 104.13(b).

⁴⁴ *Id.* § 104.14(a). There are limited exceptions to the prohibition on pre-employment inquiries about a disability for affirmative action and correcting past discrimination. *Id.* § 104.14(b). Additionally, an employer may make employment conditional on a pre-employment medical examination (and the findings thereof) if (1) all entering employees must participate in such an examination and (2) the results of such an examination are used only according to Section 504. *Id.* § 104.14(c)–(d).

⁴⁵ *Id.* § 104.46(c).

⁴⁶ *Id.* § 104.46(b).

⁴⁷ *Id.* § 104.21.

⁴⁸ *Id.* § 104.22(a).

⁴⁹ *Id.* §§ 104.22(b), 104.23. Structural changes to existing facilities are not necessary if other methods can effectively make the facility accessible to persons with disabilities. *Id.* § 104.22(b).

⁵⁰ *Id.* § 104.23(a)–(b).

⁵¹ *Id.* § 104.23(c)(1); see also *id.* § 104.23(c)(2)–(3) (allowing exceptions for mechanical rooms and similar spaces).

⁵² Discrimination on the Basis of Disability in Federally Assisted Programs and Activities, 77 Fed. Reg. 14,972, 14,972–14,974 (Mar. 14, 2012) (stating that "for new construction and alterations commenced on or after September 15, 2010, [ED] will permit recipients of Federal financial assistance from the Department to use an additional alternative accessibility standard in lieu of the Uniform Federal Accessibility Standards").



J. Housing

If a university provides housing to nondisabled students, it must provide housing that is comparable, convenient, and accessible to students with disabilities at the same cost.⁵³ Likewise, if a university works with another person or organization to make housing available to its students, the university must strive to ensure that such housing is, as a whole, made available to persons with disabilities.⁵⁴

V. PENALTIES

Failure to comply with Section 504 may result in suspension or termination of a school's federal financial assistance.⁵⁵ The assistant secretary for the Department of Education's Office for Civil Rights may also enforce any action deemed necessary to remedy the effects of discrimination.⁵⁶

VI. RELATED MEMOS

Animals on Campus Policy

VII. STAYING UP-TO-DATE

DOCUMENT/REFERENCE	DESCRIPTION
Accommodation of Persons with Disabilities at BYU–Hawaii Procedures	Current BYU–Hawaii policy regarding persons with disabilities at BYU–Hawaii
A Guide to Disability Rights Laws	A booklet from the U.S. Department of Justice that provides a brief overview of ten federal laws that protect the rights of people with disabilities (not all ten laws apply to BYU–Hawaii)
Dear Colleague Letter: Electronic Book Readers	A letter from the U.S. Departments of Justice and Education providing guidance on the accessibility of electronic book readers to those with visual disabilities
Protecting Students with Disabilities	U.S. Department of Education FAQ page concerning "Section 504 and the Education of Children with Disabilities"

⁵³ 34 C.F.R. § 104.45(a).

⁵⁴ *Id.* § 104.45(b).

⁵⁵ *Id.* § 100.8(a).

⁵⁶ *Id.* § 104.6(a)(1)–(3).