


# Post-Pandemic Accommodations for Students with Disabilities


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## Introductions




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## Road Map

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Overview of federal law

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Review of recent cases and federal guidance

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Digital accessibility considerations

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Trends in pandemic-era accommodation requests

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Best practices



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## Federal Laws

- Section 504 of the Rehabilitation Act of 1973 (“Section 504”)
- Americans with Disabilities Act (the “ADA”)
  - Title II
  - Title III
- Courts read these statutes together as granting the same protections.



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## Standard for Analysis

- 1) Is the student disabled?
- 2) How does the disability impact this individual student?
- 3) Is a reasonable accommodation necessary for equal access?
- 4) Does the student's proposed accommodation:
  - Impose any undue financial or administrative burden?
  - Require a fundamental alteration to the nature of the program?
- 5) Is there an alternative reasonable accommodation?



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## Federal Guidance

- OCR: COVID-19 has not changed the legal standard.

***“Whether an institution serves students in a brick-and mortar or an online environment, the institution must ensure that students with disabilities have an equal opportunity to access educational programs, consistent with protecting the health and safety of the student and those providing that education to the student.”***

Office for Civil Rights, U.S. Dep't of Educ., *Questions and Answers for Postsecondary Institutions Regarding the COVID-19 National Emergency* (May 2020).



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## Federal Guidance (cont.)

- *Colleges, universities, and other postsecondary institutions are not required to modify academic requirements that the school can demonstrate are essential to the program of instruction the student is pursuing or to any directly related licensing requirement. For example, a school would not be required to provide modifications that would lower the school's academic standards.*
- Office for Civil Rights, U.S. Dep't of Educ., Questions and Answers on Civil Rights and School Reopening in the COVID-19 Environment (May 13, 2021).



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## Federal Guidance (cont.)

- OCR Short Webinar on Online Education and Website Accessibility
  - <https://www.youtube.com/watch?v=DCMLk4cES6A>



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## Recent Cases

- ***Shank v. Carleton Coll.***

- No. 19-3047, 2021 WL 1228068, at \*7 (8th Cir. Apr. 2, 2021)
- Student victim of sexual assault sought excusal from in-person class, extended time on assignments, leniency on absences.
- Case highlights interactive process, open communication, and value of offering alternative accommodations when not granting preferred accommodation.



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## Recent Cases (cont.)

- ***Rossley v. Drake Univ.***

- 979 F.3d 1184, 1196–98 (8th Cir. 2020), cert. denied, No. 20-1083, 2021 WL 1072323 (U.S. Mar. 22, 2021)
- Expelled student claimed after-the-fact that he should have been granted more accommodations in student discipline hearing.
- Case highlights importance of documentation of interactive process and what was requested and agreed upon.



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## Recent Cases (cont.)

- ***Joseph M. v. Becker Coll.***

- No. CV 18-40167-TSH, 2021 WL 1209587 (D. Mass. Mar. 31, 2021)
- Expelled student claimed the university failed to accommodate his socialization and communication deficits.
- Court rejected a constructive notice claim and commended the university's response to social emotional needs.



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## Recent Cases (cont.)

- ***Sandie v. George Fox Univ.***

- No. 3:18-CV-01339-AC, 2021 WL 1214792, at \*12–15 (D. Or. Mar. 11, 2021); *report and recommendation adopted sub nom. Sandie v. George Fox Univ.*, No. 3:18-CV-01339-AC, 2021 WL 1206578 (D. Or. Mar. 30, 2021).
- Terminated practicum student sought excusal from program demands and blamed termination on disability rather than own behavior.
- Court found that university can enforce fundamental requirements of program and school rules.



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## Recent Cases (cont.)

- *Jain v. Carnegie Mellon Univ.*
  - No. 20-1637, 2021 WL 840928, at \*2 (3d Cir. Mar. 5, 2021).
  - Student who failed class claimed undisclosed disability and lack of accommodations was the cause.
  - Case highlights importance of documentation and a “catch-all” question during interactive process.



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## Digital Accessibility

- Regulation status
- Prevailing standards
- Website accessibility v. digital accessibility
- History of OCR enforcement actions
- Standard resolution agreements



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## Pandemic Trends

- Short-term disabilities
- Remote learning
- Recorded lectures/Video captioning
- Mental health accommodations
- Housing requirements and room assignments
- Reduced course loads
- Testing accommodations



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## Best Practices

- Establish & follow a formalized process
- Flexibility & individualized decision-making
- Stakeholder support & training (HR; Faculty; IT; Deans)
- Documentation
- Beware of Impact on Tuition-Refund Cases
- Beware 'Court of Public Opinion'



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