

## **Campus Mental Health: Frequently Asked Questions**

Many students attending colleges and universities experience anxiety, depression, and other mental health problems. According to the 2016 National College Health Assessment, almost 40% of college students reported that they felt “so depressed it was difficult to function” at some point in the prior 12 months, 19% felt overwhelming anxiety, and 10% had seriously considered suicide. If you are a college or graduate student experiencing one of these challenges or another mental health issue, you may be worried about its effect on your academic progress, disciplinary status, or ability to participate in social or other activities at your school. In this guide, we hope to answer some of your questions about your rights as a student with mental illness, as well as about the legal protections, accommodations, and resources available to you.

### **Which Laws Protect My Rights as a College or Graduate Student with a Disability?**

Nearly all universities are subject to the Americans with Disabilities Act (ADA), either because they are publicly funded or, in the case of private universities, because they are considered public accommodations.<sup>1</sup> Most universities and colleges also receive federal funds in some form, and will therefore be subject to Section 504 of the Rehabilitation Act of 1973 (Section 504).<sup>2</sup> Colleges that provide housing—including dorm housing—must also comply with the Fair Housing Act (FHA).<sup>3</sup> Many states also have anti-discrimination laws that apply to universities.

The ADA, Section 504, and the FHA prohibit discrimination on the basis of disability, defined in the ADA as “a physical or mental impairment that substantially limits one or more major life activities of [an] individual; a record of such an impairment; or being regarded as having such an impairment.”<sup>4</sup> Because the definition of “major life activity” is broad and includes activities such as “thinking, concentrating, sleeping and communicating,” your mental health issue will usually be considered a disability under these laws.<sup>5</sup>

Under the ADA, Section 504, and the FHA, a university may not exclude an otherwise qualified individual from a program, activity, or facility (such as a dorm or library) because that person has a disability.<sup>6</sup> These laws also require that universities provide “reasonable accommodations” to students with disabilities that are designed to help them participate fully in university life. For more information on what constitutes a reasonable accommodation, see below.

In addition, two laws—the Health Insurance Portability and Accountability Act (HIPAA) and the Family Educational Rights and Privacy Act (FERPA)—protect your privacy, including the confidentiality of any disciplinary or medical records related to your disability. These laws limit the information school administrators may request from your mental health provider and usually prevent them from disclosing information related to your disability, or your academic or disciplinary record, without your permission.

### **What Kinds of Accommodations Are Reasonable?**

The ADA and Section 504 require schools to provide students with disabilities with “reasonable accommodations.” A reasonable accommodation in the academic context is a “modification to . . . academic requirements [that is] necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of [disability], against a qualified . . . applicant or student.”<sup>7</sup> For instance, a student might need extra time to complete exams, permission to take a leave of absence, or access to assistive technology or transportation services.

Under the FHA, schools must also make reasonable accommodations to housing policies when they are necessary to provide equal access for students with disabilities.<sup>8</sup> In this context, reasonable accommodations may include providing the student a private room or allowing the student to keep a service or emotional support animal in campus housing.

A school may refuse to provide an accommodation only if providing it would fundamentally alter the nature of its academic or residential program or would impose an undue burden on the school, which balances factors like the nature and cost of the proposed accommodation and the school’s resources.<sup>9</sup>

### **How and When Should I Request an Accommodation?**

All schools that receive federal funding must designate a staff member or administrator as a disability services coordinator (DSC). When requesting an accommodation, the DSC and his/her office should be your first point of contact. The DSC can guide you through your school’s internal process for requesting accommodations, which may require you to disclose some information in writing related to your disability and the types of accommodations you need. You should not, however, be required to provide extensive medical documentation. Similarly, you should not be required to disclose your entire medical history or the content of sessions with a mental health provider. At most, the DSC should request a letter from your healthcare provider or counselor stating that you have a disability and explaining that disability’s relationship to your ability to function in college. The DSC should also serve as your liaison with professors, administrators, and other school officials in all matters related to your disability. If you are seeking accommodations in your dorm, it is also a good idea to speak with your school’s Dean of Students or residential advisors, who may be more familiar with the housing accommodations your school can provide.

You should request accommodations from your school’s DSC as soon as you think they are needed, regardless of whether it is the first day of your college career or the last week before graduation. A school is not expected to accommodate a need of which it is unaware. If

your needs change, you can always ask that the DSC modify the accommodations provided or request additional accommodations.

### **I Am Facing Discipline for Conduct Related to My Disability. What Should I Do?**

A student with a disability should not be disciplined for the disability itself (for instance, a school may not discipline a student because that student complains of hallucinations). But schools may seek to discipline a student for behaviors that arise as a consequence of a disability if those behaviors violate a code of conduct or other disciplinary rules, so long as the school applies the rules in a non-discriminatory manner. In other words, a student who hallucinates may be disciplined if these hallucinations cause him or her to disrupt a class, just as a non-disabled student would be disciplined for the same disruptive behavior (but note the discussion below about a school's obligation to provide reasonable accommodations in the student disciplinary process). In addition, schools should not seek to discipline students who engage in or threaten to engage in self-harming behaviors, which are often linked with mental illness.

If university personnel seek to discipline you for conduct related to your disability, they will most likely provide you with an opportunity to appeal their decision in writing or contest it in a hearing. Information about the various steps in the disciplinary process should be available on the school's website. During this process, you should consider disclosing that you have a disability if you have not done so already. This will enable you to request a reasonable accommodation to the school's discipline policies, such as a leave of absence rather than disciplinary action, or to present the disability as a mitigating circumstance. It may also be helpful to show that, with appropriate supports, you can prevent the disability-related behavior from recurring. A letter from your mental health provider could help you do this. In general, the more evidence you have to demonstrate that the school is seeking to punish you for behavior related to your disability, the better the chances are that you may avoid disciplinary action.

If school administrators make use of information contained in your academic record to make a decision related to discipline, you have the right to request that such information be shown only to individuals with a "legitimate educational interest" in that information.<sup>10</sup> In the case of a disciplinary determination, this might mean that members of the school's judiciary committee or the Dean of Students can access relevant parts of your academic record, but others (including professors, other students, or your parents) have no right to do so without your express permission.

### **What Are My Rights Regarding Medical Leaves of Absence?**

If you find yourself struggling with the academic or other demands of your educational program as a result of your disability, you may decide to take a medical leave of absence to focus on your recovery. Rarely, your school may require that you take a leave of absence if it decides you cannot safely remain on campus. In either situation, you retain the right to be treated fairly and without discrimination. You should consult your school's policies regarding leaves of absence before making the decision to request such a leave.

## **Voluntary Leave**

Most schools permit students to take a voluntary leave of absence for mental health reasons. When deciding whether to take a voluntary leave of absence, you may wish to consult with your school's counseling center or another mental health professional. The counseling center may be able to help you secure a formal leave of absence from the school.

If you choose to take a voluntary leave of absence, your school should not place any treatment-related restrictions on your ability to return to campus, though they may ask you to wait until the beginning of the next quarter, semester, or academic year to resume taking classes. Students on voluntary leaves of absence should be permitted to attend campus events, visit friends on campus, and access campus facilities.

## **Involuntary Leave**

The decision to impose an involuntary leave of absence on a student should only be made in extraordinary circumstances. Imposing a leave of absence is justified *only* if a student cannot safely remain at a university or meet its academic standards, and the risk cannot be reduced to an acceptable level with accommodations. Similarly, a student may only be barred from university housing if he/she cannot safely remain there, even with accommodations.

Schools use different procedures to make decisions concerning involuntary leave, but they must conduct an individualized assessment, based on objective evidence, that considers the nature, severity, and likelihood of the risk, and whether the risk can be reduced through reasonable accommodations.<sup>11</sup> In conducting this inquiry, most schools will consult with or ask for an assessment by mental health professionals. In most cases, a student faced with an involuntary leave will be given basic procedural protections. For example, the school will typically notify the student or his/her representative of the action under consideration and may provide a written explanation of that action. The school will also usually give the student or his/her representative an opportunity to respond and explain why he/she should not be required to leave. In framing your response, it may be helpful to seek the advice of a psychiatrist or other mental health professional, who can provide an independent evaluation of your mental health and suggest ways to address the school's safety concerns. If you are ultimately required to withdraw, your school should provide the same arrangements for withdrawing from classes and obtaining a tuition refund as it would for a student withdrawing for another reason (e.g., a physical injury related to an accident).

A school has the right to access limited medical information about your mental health status and disability when it is considering imposing a leave of absence. Your school may therefore request recent mental health records to determine whether you may safely remain on campus, and it may inquire into your current mental health condition. But your school may not request unlimited access to your health or medical records, and you may limit the release of confidential medical information to specific dates. You also have the right to review all records your school requests before access is granted.

## Conditions on Returning from Involuntary Leave

A school has the right to impose limited conditions on your ability to return, particularly in the case of an involuntary leave. Even so, a school may not impose more onerous requirements on students returning from a leave of absence for mental health reasons than on other students returning from other types of leaves.<sup>12</sup> Your school cannot require that your mental illness be cured, but it is allowed to ask you to demonstrate that the risk that motivated your initial removal no longer exists or has been sufficiently mitigated. Some schools will request that you have your mental health provider send a report stating that you attended treatment and are ready to return to school. They may also request that you sign a behavioral contract, stipulating (for example) that you will abide by the terms of the university's code of conduct, and in some circumstances may ask that you commit to taking certain steps to preserve your mental health. You have the right to decline this contract and/or negotiate its terms, though it is possible you will not be allowed to return without signing the contract. Ultimately, decisions about whether your mental health permits you to return to campus, including the determination that it is safe for you to return, should be made by a mental health professional rather than by the school administration.

### **My School Is Denying the Accommodations I Requested and/or Imposing Discriminatory Disciplinary Procedures. What Can I Do?**

If your school is refusing to accommodate you, denying you access to certain parts of its academic or residential program, or subjecting you to discriminatory disciplinary procedures, you should first follow your school's internal grievance or appeal process. Information about these processes should be available on the school's website.

If that fails to resolve your issue—or you feel the process was itself discriminatory—you have the right to file a complaint with the Department of Education's Office for Civil Rights (OCR). If OCR determines that your complaint has merit, it will take action against your school and require it to rectify the situation. Complaints must be filed within 180 days of the event you believe to have been discriminatory.

Before filing a complaint, it may be useful to seek legal advice. In addition to helping you draft your complaint, a lawyer will advise you on state and federal law applicable to your situation. Your lawyer can also help you decide whether to consider a lawsuit against the school.

## Resources

If you have difficulty getting the accommodations you need from your school or need assistance requesting a reasonable accommodation, try contacting the [National Alliance on Mental Illness](#), [Active Minds](#), your state [Protection and Advocacy organization \(P&A\)](#), or a [local legal aid organization](#).

If you believe your school has discriminated against you, you can file a complaint with the Department of Education’s Office for Civil Rights (OCR) at:  
<https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

If you believe university administrators have made inappropriate use of your medical information, you can file a complaint at: <https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf> (select the HIPAA option).

If you believe your right to privacy has been violated, you can file a complaint with the Department of Education, Family Compliance Office, at:  
[http://familypolicy.ed.gov/sites/fpco.ed.gov/files/EComplaint%20form%20FERPA\\_052217.pdf](http://familypolicy.ed.gov/sites/fpco.ed.gov/files/EComplaint%20form%20FERPA_052217.pdf).

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<sup>1</sup> See 42 U.S.C. § 12131(1)(A); 42 U.S.C. § 12181(7). Note that the ADA does not cover “religious organizations or entities controlled by religious organizations,” a category that may include some religiously affiliated colleges. 42 U.S.C. § 12187.

<sup>2</sup> 29 U.S.C. § 794(a) (“No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from participation in...any program receiving Federal financial assistance”). Universities that accept students benefitting from Pell Grants or other federal financial aid programs are considered to be “programs receiving federal financial assistance.”

<sup>3</sup> 42 U.S.C. §§ 3601 *et seq.*

<sup>4</sup> 42 U.S.C. § 12102(1).

<sup>5</sup> *Id.* at § 12102(2).

<sup>6</sup> If you have been accepted to a university, you are considered to be “qualified” to attend. See, e.g., Resolution Letter to Spring Arbor University from the Office for Civil Rights, OCR Complaint No. 15-10-2098 at 10 (Dec. 16, 2010) (because the complainant had been accepted into the academic program and had not been subsequently disqualified as a result of academic or disciplinary factors, he remained a qualified individual).

<sup>7</sup> 34 C.F.R. § 104.44(a).

<sup>8</sup> 42 U.S.C. § 3604(f)(3)(B); see also 34 C.F.R. § 104.45(a) (university housing for students with disabilities must be “comparable, convenient and accessible . . . at the same cost as to others”).

<sup>9</sup> 42 U.S.C. § 12182(b)(2)(A)(iii); see also 34 C.F.R. § 104.44 (“requirements . . . essential to instruction pursued by each student [or] directly related to licensing requirements will not be regarded as discriminatory”).

<sup>10</sup> 20 U.S.C. § 1232g(b).

<sup>11</sup> See 28 C.F.R. § 36.208(b).

<sup>12</sup> See Resolution Letter to Spring Arbor University from the Office for Civil Rights, OCR Complaint No. 15-10-2098 at 10-11 (Dec. 16, 2010).