



KNOW YOUR RIGHTS: LEAVE OF ABSENCE POLICIES IN HIGHER EDUCATION

I. WHAT IS A LEAVE OF ABSENCE?

- “A break in studies” with the intention to reenroll later
- May be taken for medical circumstances or other personal reasons

II. TERMINOLOGY

- Voluntary Leave→ The student made the choice to go on leave from the school.
- Involuntary Leave→ The school made the choice to put the student on leave
- Your school may use a term other than “leave of absence” which may include “Emergency leave” or “medical leave”.
- If you are considering taking a break from your studies for a mental health reason, make sure you know what kind of a break you are taking and what, if any, services will be available to you while you are on leave.

A. Know your school’s policies surrounding leaves of absence:

- *Check your school’s website or student portal for their policies.*
 - Some schools provide very little information and require you to request this from the administration on your own accord.
- *Knowing what services you are entitled to during a leave of absence is important for understanding what you are opting into, should you choose to take a leave.*
 - For example, at some schools, students can lose access to their housing, health insurance, right to be on campus, campus transportation, and campus email address while on a leave of absence.

III. WHAT ARE MY RIGHTS?

- Students with psychiatric disabilities (e.g., anxiety, bipolar disorder, depression, and schizophrenia) are protected from discrimination on the basis of disability.
 - Your college or university may be discriminating against you if it treats you differently than other students because of your disability; for example,

by imposing more onerous conditions on you than it does for students taking leaves of absence for reasons other than a disability.

- Laws that cover students with psychiatric disabilities in addition to students with physical, learning, and intellectual/developmental disabilities:
 - Federal laws: govern what is permissible in terms of how a college or university outlines their leave of absence policies, practices, and procedures.
 - *Americans with Disabilities Act (“ADA”)*
 - The ADA also covers all public and private colleges and universities.
 - Under the ADA a disability includes “a physical or mental impairment that substantially limits one or more major life activities.” Major life activities include, but are not limited to, learning, concentrating, thinking, and caring for oneself.
 - *Section 504 of the Rehabilitation Act (“Section 504”)*
 - Section 504 covers all those colleges and universities which receive Federal financial assistance (including those who accept federal student loans).
 - **The ADA and Section 504 are meant to provide a “clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” which includes the way in which colleges treat students who choose to take a leave of absence for reasons pertaining to a disability.**
 - *Numerous state and local laws* – it depends on your state and city

IV. MANDATORY MINIMUM TIME OFF:

A. The problem with mandatory minimum time off:

- Some colleges and universities have policies that require students who go on leave to be out for a minimum period of time, such as until the end of that quarter, semester, or year. This may be discriminatory.
- As a general rule, colleges and universities are required to provide programs and services in the most integrated setting possible, including affording students with disabilities full and equal access to participation in all aspects of student life and the college’s benefits and services.

- **By imposing a blanket mandatory time off rule, colleges may be in violation of laws prohibiting the exclusion of students with disabilities.**

B. How this policy effects students with psychiatric disabilities:

- Students with psychiatric disabilities are more likely to need to take a leave of absence, or multiple leaves, in order to focus on treatment to manage their symptoms.
- Therefore, policies requiring students to be out for a minimum period of time are more likely to disproportionately keep students with psychiatric disabilities from being able to resume their studies and graduate in as timely a manner as possible.
- **Rather than impose blanket minimum time-off rules, schools should conduct individualized assessments to determine a student’s readiness to return. Unfortunately, this does not always happen. Make sure to inquire about whether your college or university imposes mandatory minimum time-off policies or, instead, conducts individualized assessments to determine when students with psychiatric disabilities are ready to return from a leave of absence.**

V. READMISSION REQUIREMENTS:

- Some colleges and universities impose requirements on students to demonstrate their readiness to return, such as:
 - engagement in therapy
 - work
 - providing medical updates
 - engaging in completion of coursework at another campus.
 - (Many often ask students to provide medical information from personal doctors that can speak to the student’s readiness to return.)
- **As a general rule, colleges and universities are not allowed to use criteria or otherwise administer their policies in a way that has the effect of “screening out” or otherwise excluding students with disabilities from fully and equally enjoying their services, unless they can show such criteria is necessary.**
 - For example, a college or university may impose legitimate safety requirements necessary for the safe operation of its programs and services. However, any such requirements must be based on actual risk and not on mere speculation, stereotypes, or generalizations about students with disabilities.
 - *It is not proper for a school to speculate that a student’s disability creates a risk of harm without evidence.*

- Along those same lines, schools are not required to allow students who pose a “direct threat” – or significant risk to the health or safety of others – to participate in their programs and services.
 - However, in determining whether such a risk exists, the school must make an individualized assessment of the nature of the risk based on current objective medical knowledge and evidence, and whether a modification of policies or practices could eliminate the risk.
- Return to school policies differ between schools, and it is important to understand what your school’s requirements are in order to be prepared. Some requirements might include providing medical information, meeting specific deadlines, filling out paperwork, and speaking with college health officials.

VI. REASONABLE MODIFICATIONS:

- To the extent existing policies, practices, and procedures have the effect of excluding or burdening students with psychiatric disabilities – more so than other students – students with disabilities can request an exception, or “reasonable modification.”
- As discussed above, **colleges and universities are required to provide students with psychiatric disabilities full and equal access to their programs and services.**
 - While, in some contexts, avoiding discrimination means treating various communities exactly the same, ensuring equality for people with disabilities often requires taking an “affirmative step” or, essentially, treating students with disabilities differently.
 - An example of this is providing textbooks in Braille or electronic formats for students with visual disabilities. In this instance, failure to provide an exception to the general rule (of only providing textbooks in traditional print) would have the effect of excluding the student with a disability from fully and equally participating in the coursework.
- **Federal law requires schools to make reasonable modifications as necessary to avoid excluding or otherwise discriminating against students with disabilities.**
 - *This is required, unless making the modification would result in a fundamental alteration or undue burden on the school.*
 - This duty to provide a reasonable modification is *only triggered by a student when they notify the university that they have a disability and need an accommodation.*
 - **Therefore, if you are taking a leave of absence for a mental health reason and need a modification of existing policies, practices, or**

procedures, you will have to disclose your disability and request an accommodation.

You are not alone!

If you or someone you know is experiencing a mental health or suicidal crisis, we encourage you to call the national lifeline at 988.

Thousands of students all over the country are facing mental health challenges and many of them take leaves of absence to focus on their health before resuming their studies. As a college student, you have a lot on your plate and your health should be a priority, both for you and your campus. Know your rights and be aware that there are a number of laws in place designed to help you.

DISCLAIMER: This information is for educational purposes only. It is not meant to provide specific legal advice or create an attorney-client relationship. In addition to federal laws, state and local laws vary between jurisdictions, and this information should not be used as a substitute for competent legal advice from a licensed professional attorney in your state.