



504 COORDINATOR TRAINING & CERTIFICATION COURSE

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YOUR FACULTY



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504 AND ADA



504 and ADA are not designed to ensure equal results...

But to create a “just result” and to provide equal opportunities for success.

KEY ISSUE



- All individuals with a qualifying disability must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or level of achievement as others
 - Institutions may provide a different or separate aid, benefit, or service only if doing so is necessary to ensure that the aid, benefit, or service is as effective as others

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CONSIDERATIONS FOR PROVIDING “EQUALITY” IN OPPORTUNITIES



- What can the institution do to provide students or employees with disabilities equal access to the educational benefits or job opportunities?
- How do the educational or work opportunities and benefits provided to individuals with disabilities compare to those provided to individuals without disabilities?
 - Are they **equally available**?
 - Are they **available in a timely manner**, similar to those provided to students without disabilities?
 - **Will it be more difficult** for students or employees with disabilities to obtain the educational opportunities than for non-disabled students or employees?

DISABILITY LAWS



504 OF THE
REHABILITATION ACT

FAIR HOUSING ACT

AMERICANS WITH
DISABILITIES ACT

STATE LAWS

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WHY IS IT IMPORTANT TO UNDERSTAND DIFFERENT LAWS?



- Laws apply differently to housing than to the campus in general, including classrooms and dining facilities
- Laws apply different definitions and standards as it relates to service vs. assistance/emotional support animals (ESAs).
- Laws may impose different standards or response protocols.

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SECTION 504 OF THE REHABILITATION ACT, 1973



- **Prohibits discrimination** on the basis of disability in **all programs or activities** that receive federal financial assistance.
- Forbids institutions from excluding or denying individuals with disabilities an **equal opportunity** to receive program benefits and services.
- Enforced by the U.S. Dept. of Education, Office of Civil Rights.
- Codified at **29 U.S.C. § 701**.

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SECTION 504 STATES:



- “No otherwise qualified individual with a disability in the United States, as defined in Sec. 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

704(a) Promulgation of nondiscriminatory rules and regulations

TITLE II & III ADA



Title II:

- Prohibits discrimination on the basis of disability by **public entities, including state colleges and universities**, regardless of whether they receive federal financial assistance.

Title III:

- Prohibits discrimination on the basis of disability in **private education facilities and in the activities of places of public accommodation**.

Both Title II & Title III are enforced by the Dept. of Justice.

The language of ADA tracks Section 504 and explains that the remedies, procedures, and rights under the ADA are the same as under the Rehabilitation Act.

HOW IS 504 DIFFERENT FROM ADA?



- Section 504 (1973) and the ADA (1990) are both civil rights laws, However.....
- **Section 504** was created to protect individuals with disabilities from discrimination for reasons related to their disabilities. **504** protections are applied to programs or businesses that receive federal funds.
- **ADA, Sec II & III** adds to the strength of Section 504 by **extending it** to private institutions, workplaces, and to state and local government funded programs.
- Between the two laws, all government funded programs are covered.

FAIR HOUSING ACT



- FHA **applies to residential “dwellings,”** a term that likely encompasses campus housing, including residence halls.
- FHA makes it unlawful to “discriminate against any person in the terms, conditions, or privileges of sale or rental of a **dwelling, or in the provision of services or facilities in connection with such a dwelling because of a handicap...**”
- FHA requires allowance for **“assistance animals”** for a qualified individual with a disability in all dwellings.
- Enforced by the Department of Housing and Urban Development, Fair Housing Act.

DISABILITY OVERVIEW

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WHO IS PROTECTED UNDER SEC 504 & ADA?



- Under this law, **qualified individuals with disabilities** are defined as:
 - Persons **with a physical or mental impairment** which substantially limits one or more major life activities;
 - Persons who have a **record of having a physical or mental impairment**; or
 - Persons who are **regarded as having a physical or mental impairment** that substantially limits one or more major life activities.

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WHAT DOES IT MEAN TO BE A “QUALIFIED INDIVIDUAL WITH A DISABILITY”?



- A qualified individual with a disability is someone who, with or without **reasonable modifications** to rules, policies, or practices or provision of auxiliary aids and services, meets the **essential eligibility requirements** to be able to receive the receipt of services or to participate in programs or activities of the educational entity.
- All qualified individuals with a disability **must be provided with aids, benefits, or services that provide an equal opportunity to achieve the same result or level of achievement as others.**
 - Institutions **may provide a different or separate aid, benefit, or service than requested by the qualified individual with a disability only if doing so is necessary** and ensures that the aid, benefit, or service is as effective as the one requested.

WHAT IS THE DIFFERENCE BETWEEN AN IMPAIRMENT AND A DISABILITY?



- The law draws a distinction between an impairment and a disability.
- There are more people with impairments than with disabilities.
- The difference lies in the **effect** the impairment has on the person.
- If the impairment causes a “substantial limitation” of a “major life activity” then the person has a disability.

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WHAT IS A “PHYSICAL OR MENTAL IMPAIRMENT”?



A “Physical Impairment”

- Is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss that affects one or more of the body systems, such as:

Neurological

Musculoskeletal

Special sense organs

Respiratory (including speech)

Cardiovascular

Reproductive

Digestive

Genitourinary

Lymphatic

Skin & Endocrine

A “Mental Impairment”

- Is a mental or psychological disorder includes mental retardation, emotional or mental illness, and specific learning disorders

EXAMPLES OF A “MAJOR LIFE ACTIVITY”?



- Major life activities include caring for one’s self, performing manual tasks such as:
 - Walking
 - Seeing
 - Hearing
 - Speaking
 - Breathing
 - Working
 - Learning

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WHAT DOES “RECORD OF” AND “REGARDED AS” HAVING AN IMPAIRMENT MEAN?



- A Record of having an impairment means that an individual has a history of having a mental or physical impairment that limits one or more major life activities.
- Regarded as having an impairment means a person may or may not have a qualifying impairment, but is treated as having an impairment that qualifies as a disability.

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COMPLIANCE REQUIREMENTS



- An institution must make reasonable modifications in policies or procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the institution can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity. *(28 C.F.R. Sec. 35.130 (b)(7)(i))*
- An institution may not impose or apply criteria that screens out or tends to screen out an individual with a disability for fully and equally enjoying any service, program or activity.

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COMPLIANCE REQUIREMENTS (cont.)



- For all reasonable modification determinations the institution must conduct an individualized assessment and case-by-case determination as to whether and what modifications can be made to allow an individual with a disability to participate in the services, programs or activities of the institution.

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HOW IS THE 504
COORDINATOR DIFFERENT
FROM THE DISABILITY
SERVICES COORDINATOR?

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504 COORDINATOR v. ACCESSIBILITY/DISABILITY SERVICES COORDINATOR



- Accessibility/Disability Services Coordinator is responsible for verification of the intake of requests for accommodations; engaging in the interactive process; identifying with the student or employee appropriate accommodations; serving as liaison with faculty and supervisors.
- The 504/ADA Coordinator is responsible for publication of non-discrimination notice; oversight of the grievance process; investigation of grievances,
- Should it be the same person?

504 COMPLIANCE AND ROLE OF 504/ADA COORDINATOR

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SECTION 504/ADA GENERAL COMPLIANCE REQUIREMENTS



- If the institution accepts federal funds or employs more than 50 people the institution **must designate an employee to coordinate all efforts to comply** with and carry out its responsibilities, including:
 - **Ensuring dissemination of notice** of the institution's non-discrimination policy.
 - **Adopting civil rights grievance procedures** that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of discrimination.
 - **Conducting investigations** of complaints regarding noncompliance with the legal mandates of ADA or 504.
 - **Providing notice** of the name, office address, and telephone number of the employee or employees designated to oversee 504/ADA compliance.

TYPICAL 504/ADA COORDINATOR ADMINISTRATIVE REQUIREMENTS



- The Section 504/ADA Coordinator is, at a minimum, responsible for:
 - **Coordinating and monitoring compliance** with Section 504 and Title I, II or Title III of the ADA;
 - **Overseeing state civil rights requirements** regarding discrimination and harassment based on disability;
 - **Overseeing prevention efforts** to avoid Section 504 and ADA violations from occurring;
 - **Implementing the institution's discrimination complaint procedures** with respect to allegations of Section 504/ADA violations, discrimination based on disability, and disability harassment

REQUIRED STANDARD NOTICE



- In accordance with the requirement of 504 of the Rehabilitation Act of 1973 and Title II [or Title III if a private school] of the Americans With Disabilities Act of 1990 (ADA) the [name of your institution] will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. The [name of institution] does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Dept. of Education, the U.S. Dept. of Justice and the U.S. Equal Employment Opportunity Commission.*

GRIEVANCE POLICY SHOULD INCLUDE



- A description of how and where a complaint under 504/ADA may be filed.
- If a written complaint is required, a statement notifying potential complainants that alternative means of filing will be available to people with disabilities who require such an alternative.
- A description of the time frames and processes to be followed by the complainant and the institution.
- Information on how to appeal an adverse decision.
- A statement of how long complaint files will be retained and where they are retained.

ELEMENTS OF A GRIEVANCE PROCESS



- All grievances related to disability discrimination or harassment should be directed to the 504 Coordinator.
- The complaint should be in writing, clearly stating the issue presented.
- The 504 Coordinator should conduct an investigation of the complaint (could be formal or informal).
- The investigation must be thorough, reliable, and impartial.
- The 504 Coordinator shall issue a written report and decision.
 - Must have a time limit here
 - Recommend 30 days

ELEMENTS OF A GRIEVANCE PROCESS (CONT'D)



- The Individual filing the Complaint may appeal the decision by providing a written appeal to (insert appropriate person) within 10 days of the decision by the 504 Coordinator.
- The decision by the Appeal Officer is a final decision.
- The availability and use of the grievance procedure does not prevent a person from filing a complaint with the state Civil Rights Commission or the U.S. Dept. of Education, Office for Civil Rights.

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ACCOMMODATION PROCESS K-12

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ACCOMMODATION PROCESS:



- In the K-12 environment, students with disabilities are not only supported by 504 and ADA but also by the Individuals with Disabilities Education Act (IDEA).
- The IDEA is a four-part piece of legislation that ensures students with a disability are provided with Free Appropriate Education (FAPE) that is tailored to their individual needs.
- The overall goal of the IDEA is to provide children with disabilities an equal education to the students who do not have a disability.
- However the IDEA is not a civil rights law like 504 and the ADA.

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ACCOMMODATION PROCESS:



- 504 requires the use of evaluation procedures that ensure a child is not misclassified, incorrectly placed or unnecessarily labeled as having a disability.
- The IDEA requires schools must provide an education that:
 - Is designed to meet the unique needs of each student
 - Provides access to the general curriculum to meet the challenging expectations established for all children (i.e. grade level standards)
 - Is provided in accordance with the IEP
 - Results in an educational benefit to the child
- Both 504 & IDEA may use the same process of evaluation

ACCOMMODATION PROCESS:



- If a student is eligible under IDEA he/she/they must have an IEP
- The basis for accommodating a K-12 student with a learning disability is to provide an individualized and appropriate education that the school must design to meet the unique needs of each child (an IEP Plan)
- The IEP specifies:
 - the services to be provided and how often,
 - describes the student's present levels of performance and how the student's disabilities affect academic performance,
 - and accommodations and modifications to be provided

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ACCOMMODATION PROCESS:



- When a child qualifies for an IEP, a team is convened to design the plan.
- The team must include:
 - Parents/guardians,
 - At least one regular teacher,
 - A special education teacher,
 - Someone who can interpret the educational implications of the child's evaluation, such as a school psychologist
 - Any relevant service personnel
 - A school administrator who has knowledge of the availability of services in the district and authority to commit those services on behalf of the child

ACCOMMODATION PROCESS: WHAT'S IN AN IEP?



- An IEP sets learning goals and describes the services to be provided to the student. The IEP must be reviewed every year.
- The IEP must include:
 - Child's present levels of academic and functional performance.
 - Annual educational goals and how the school will track the progress.
 - What specific services with the child get?
 - What is the timing of the services? When do they start? How often do they occur? How long will they last?
 - What are any accommodations (i.e. changes to the child's learning environment)?
 - Any modifications to the plan.
 - How the child will participate in standardized tests.
 - How the child will be included in general education classes and school activities.

ACCOMMODATION PROCESS: DIFFERENCE BETWEEN AN IEP AND A 504 PLAN



- An IEP is a plan or program developed to ensure that a child who is a qualified person with a disability and is attending a K-12 school will receive specialized instruction.
- A 504 plan is a plan developed to ensure that a child who is a qualified person with a disability and is attending a K-12 school receives accommodations that will ensure their academic success and access to the learning environment.
- Not all students with a disability require specialized instruction.
- For those students who do require specialized instruction, the IDEA guidelines control those procedural requirements.
- There is no requirement that a transfer school must honor an IEP or 504 Plan from another school.

ACCOMMODATION PROCESS: DIFFERENCE BETWEEN AN IEP AND A 504 PLAN



- The IDEA process is more involved than a standard 504 response because it requires documentation of measurable growth and must be updated annually.
- 504 plans should (but not must) be updated annually as well to ensure that the student is receiving the most effective accommodation for his/her/their specific circumstances.

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ACCOMMODATION PROCESS HIGHER EDUCATION

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THE ACCOMMODATION PROCESS



- Accommodations should be made on a case by case basis.
- An accommodation or modification is not required when:
 - It would result in a fundamental alteration of the nature of the program, service, or job function (28 CFR 35.130(b)(7)).
 - Neither Section 504 nor the Fair Housing Act require accommodations that are **an undue financial or administrative burden**.
 - Whether a particular accommodation will be an undue financial and administrative burden will depend on the facts and circumstances of the individual case.

WHAT IS A FUNDAMENTAL ALTERATION?



- A fundamental alteration means any change to a course curriculum or course of study or an approved job description that is so significant that it alters the essential nature or content of the curriculum in the approved course outline, or the approved job description.
- When a faculty member refuses to provide an accommodation identified by the Disability Services Office, that refusal will be given substantial weight if the faculty member can demonstrate that providing the academic adjustment or accommodation would fundamentally alter the learning objectives or goals of the course.

FUNDAMENTAL ALTERATION



Guidelines in assessing Essential Elements and Fundamental Alteration:

- The faculty member (often in collaboration with the DSPS staff) should identify the essential academic standards of the course, the learning outcomes and the goals for reaching those outcomes.
- Determine if there are any options to the fundamental requirements that can be modified.
- Understand why an essential element cannot be altered, ex. would an alteration lower the academic standards of the course or program?

GUIDELINES CONTINUED



- Must determine if a different method or requirement that will not be altered by the accommodation will achieve the required academic result.
- It's important to note that a decision to assert a refusal to provide a recommended accommodation because it would create a fundamental alteration should not be taken lightly.
 - OCR and DOJ as well as courts of law will frequently uphold a challenge to failure to provide an accommodation because it's asserted that the accommodation would create a fundamental alteration
- Although failure to provide a reasonable accommodation to a student with a disability is a violation of law, putting the college in jeopardy of losing federal funding or a lawsuit, the laws also require that students with disabilities meet the essential, academic, and technical standards of the class with appropriate accommodations

OCR GUIDANCE REGARDING FUNDAMENTAL ALTERATION



- "Before a formal determination can be made as to what constitutes a fundamental alteration of an essential major requirement, the University must take into consideration, among other factors, that decisions regarding essential requirements be made by a group of people who are trained, knowledgeable and experienced in the area, through a careful, thoughtful and rational review of the academic program and its requirements, and that the decision-makers consider a series of alternatives for the essential requirements, as well as whether the essential requirement in question can be modified for a specific student with a disability."

OCR GUIDANCE REGARDING FUNDAMENTAL ALTERATION



Every program is different, but factors to be considered in determining whether a standard is essential include:

- The nature and purpose of the program;
- The relationship of the standard to the functional elements of the program;
- Whether exceptions or alternatives are permitted;
- Whether the standard is required in similar programs in other institutions;
- Whether the standard is essential to a given vocation for which the program is preparing students; and,
- Whether the standard is required for licensure or certification in a related occupation or profession.

OCR GUIDANCE REGARDING FUNDAMENTAL ALTERATION



- Once an institution complies with these standards, the courts and OCR accord substantial deference to the decision reached by the institution.
- The University must therefore comply with these standards prior to finding that any requirement is essential and that accommodations will therefore not be granted to students in meeting that requirement.
- Furthermore, if it is determined that a requested academic adjustment would result in a fundamental alteration, the University must then consider whether there are alternative academic adjustments that could accommodate a student without fundamentally altering the course."

FUNDAMENTAL ALTERATIONS EXERCISES

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SITUATION



A student who is blind enrolls in a math class and requests that the instructor verbalize what they are writing on the board or overhead.

Fundamental Alteration?

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FUNDAMENTAL ALTERATION ANALYSIS



- No. Under the law and regulations, the faculty member would be legally required to make an adjustment in presentation of course material by verbalizing what is written on the board or overhead. Pointing and referring to “this” and “that” as written on the board would not give the student with a visual disability equal access to the instruction. An added benefit is that verbalizing material rather than just writing it can assist all students because the information presented is more explicit.

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SITUATION



An employee has diabetes and recently has been having substantial difficulty with neuropathy in her arms and hands. Her job is to do data entry and some paper file organizing and filing in the student financial aid office. She has asked to hire a work study student or administrative assistant to do the data entry and filing for her, or to create a new position for her that doesn't require using her hands.

Fundamental Alteration?

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FUNDAMENTAL ALTERATION ANALYSIS



- Probably. We need more information regarding her job responsibilities, but if it is substantially the data entry and filing and she cannot do it with an accommodation, she is likely not otherwise qualified for the position.
- The institution is not under obligation to hire new staffing to do her job.
- However, ethically the institution should consider if there are other jobs in the Financial Aid area that she would be suitable for.

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SITUATION



A student in the occupational therapy assistant program has a specific learning disability. This student must evaluate a patient with Cerebral Palsy, review clinical tests, and plan an appropriate intervention in a timely manner. She has requested that she be allowed to bring brief written notes into the evaluation and have extra time to read and digest the materials and patient response.

Fundamental Alteration?

FUNDAMENTAL ALTERATION ANALYSIS



- A College must determine the essential requirements for a course of study, not the state’s licensing requirements. Once essential functions and technical demands have been determined, teaching methods and learning activities can be established. The student must be permitted time for a “learning curve” like all the other students. Allowing more time in a student’s learning would be appropriate, such as permitting extended or extra practice sessions, use of notes or tape recordings.

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SITUATION



A student tells you he/she/they cannot complete writing assignments, with or without accommodations. The student requests that writing assignments not be included in his/her/their grade.

Fundamental Alteration?

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FUNDAMENTAL ALTERATION ANALYSIS



- Probably. If submitting writing assignments is an essential requirement of the class and assignments are articulated on the syllabus, there would be no legal mandate to comply with the student's request to exclude those assignments from the grade.
- If, however, writing assignments were not essential to mastering the learning objectives and the student's achievement in the course could be evaluated in other ways, such as in a conversation-based setting, then the accommodation may be acceptable.

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WHAT DOES THIS MEAN FOR STUDENTS, FACULTY & STAFF?



- For students, this means that a qualified student with a disability will be **“otherwise qualified” for admission** to a specific academic program **if he/she/they can meet all the necessary and articulated “essential functions”** of the college program with reasonable accommodations.
- For employees, it means that if the employee meets the qualifying elements to perform a job, the institution must provide appropriate accommodations.
- Students and employees with disabilities **are also protected from discriminatory harassment** directed at them because of their disabilities.

ESTABLISHING PROGRAM STANDARDS



- Creation and publication of **well-articulated program standards** are essential in order to assess accommodations that do not create a fundamental alteration of the program or course of study, such as:
 - Identifying standards for awarding a degree in a course of study.
 - Ensuring licensure/certification requirements are identified and programs appropriately aligned.
 - Ensuring program requirements are consistent with accreditation requirements.
 - Ensuring all field requirements are identified (both in clinical assignments and in the profession).
- Then reviewing the course to determine the essential requirements for outcomes how students with disabilities may be able to accomplish these with accommodations.

STANDARDS FOR THE WORK ENVIRONMENT



- The determination of whether an individual with a disability is “qualified” for a job begins with deciding whether the individual satisfies the prerequisites for the position, such as possessing the appropriate education, experience, skills, licenses, etc.
- The next step is to determine whether or not the individual can perform the essential functions of the position held or desired, with or without reasonable accommodation.
- Essential functions are the fundamental job duties of the employment position the individual with a disability holds or desires. They do not include the marginal functions of the position.

A COLLEGE HAS NO OBLIGATION TO ACT OR TO PROVIDE ACCOMMODATIONS UNTIL A REQUEST IS MADE...

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ACCOMMODATION PROCESS: NOTIFICATION



Step One:

- Student or employee notifies the appropriate office on campus that addresses accommodations for disabilities.
- Student or employee claims disability and seeks accommodation.
- In order to be eligible for academic adjustments, auxiliary aids, services, and/or authorized instruction a student or employee must have a disability which is verified.

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ACCOMMODATION PROCESS: REVIEW OF CLAIM



Step Two:

- The student's educational limitations must be identified by certificated staff and described in the Academic Accommodation Plan.
- Eligibility for each service provided must be directly related to an educational limitation.
- Once a disability has been verified, the certified DSPS staff person will need to utilize the interactive process to work with the student to identify the functional limitations of the educational environment and determine the needed auxiliary aids, services, academic adjustments, and educational assistance classes.
- In unusual cases where agreement cannot be reached between the student and the college staff, additional documentation of the impact of the disability on the student may be required.

ACCOMMODATION PROCESS: DOCUMENTATION



- Colleges may establish reasonable standards for documentation.
- Source should be from an appropriately trained individual.
- A person with a master's degree in education or developmental psychology may be appropriate to evaluate a learning disability.
- A medically trained person is necessary to diagnose medical or psychological matters or pregnancy-related matters.
- If the claim or supporting documentation is in question the institution may request a second opinion, but the institution must pay.

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ACCOMMODATION PROCESS: THE INTERACTIVE PROCESS



Step Three:

- Institutions should engage in an “interactive process” to determine appropriate accommodations that meet an individual’s needs.
 - Although the program as a whole must be accessible and services provided in the most integrated setting possible, the law does not require a college to lower its standards to accommodate a disabled student or employee.
 - Determining what form of accommodation is appropriate is an important task. Discouraging students from defining themselves by what they can’t do is critical.
- All aids and adjustments must be provided in a timely manner.

TEMPORARY DISABILITIES



- Under both the ADA & the ADAA the institution must recognize and accommodate temporary disabilities. Examples include a broken leg, recovery from surgery, or pregnancy-related disability condition
- If a temporary disability is very short-term (ex. 2-3 weeks), the student may be given permission to discuss temporary adjustments with his/her/their professor
- In cases of longer-term disabilities such as a pregnancy-related disability spanning six months, the DSPS should be the coordinating entity for academic adjustments.

SOME IMPORTANT THINGS TO KNOW



- An institution is not required to provide:
 - Personal devices such as wheelchairs
 - Individually prescribed devices such as prescription eyeglasses or hearing aids
 - E-readers for personal use or study
 - Services of a personal nature including assistance in eating, toileting, or dressing

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SPECIAL CASES

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ADA & ACADEMICS

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GUIDELINES IN ACADEMIC ACCOMMODATIONS



Academic requirements should not discriminate against qualified students with disabilities;

However, if colleges can demonstrate that certain academic requirements are essential to the program, then the requirement is not regarded as discriminatory.

104 CFR 104.44(a)

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PROVIDING ACCOMMODATIONS



A recommended accommodation is not required if....

The faculty member or the college can demonstrate that making requested accommodations would fundamentally alter the nature of the course or program.

28 CFR 35.130(b)(7)

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Russell Campbell v. Lamar Institute of Technology, (5th Cir., 11/23/2016)

- Campbell was a student at Lamar Institute of Technology (LIT), and was provided accommodations for his learning disability.
 - Campbell had a brain injury impacting his ability to retain and process information.
 - LIT provided extended time for all exams, and a laptop and a voice recorder to help him with note-taking.
 - A faculty member even gave him two different final exams two weeks apart – the faculty member created a second exam.

CASE EXAMPLE: ADA & ACADEMICS



- Campbell asked for two extra weeks of study time after the other students took the final for all his exams.
 - Campbell provided a Dr.' s note that stated, “he needs a week to two weeks to retain new information prior to testing over that material.”
- LIT refused the two extra weeks’ request, as they considered it:
 - Unreasonable because all faculty would have to create two exams.
 - The accommodation would give Campbell an unfair advantage over other students.
 - Could require faculty to lower the standards of their class.

CASE EXAMPLE: ADA & ACADEMICS



- LIT met with Campbell and his wife and said he could ask individual instructors to accommodate him.
- Campbell met with instructors, who denied his request for two extra weeks to study, indicating it was not reasonable.
- LIT offered to “provide reasonable accommodations supported by medical documentation and would waive tuition and fees for the next semester.” Campbell refused.
- Campbell filed a lawsuit alleging denial of accommodations.
- The 5th Circuit held in favor of LIT, stating their denial of the requested accommodations was not discriminatory.

EXAMPLES OF ACCOMMODATIONS

- Additional time to complete tests or coursework
- Substitution of nonessential courses for degree requirements;
- Adaptation of course instruction;
- Recording of classes; or being provided PowerPoints or lecture notes
- Modification of test taking/performance evaluations so as not to discriminate against students with sensory, manual, or speaking impairments (unless such skills are the factors the test purports to measure).



EXAMPLES OF ACCOMMODATIONS

- Qualified interpreters
- Notetakers
- Computer aided transcription services
- Written materials, assistive listening systems
- Closed caption decoders
- Open and closed captioning, TDDs
- Readers, taped texts, audio recordings
- Large print and Brailled materials
- Acquisition or modification of equipment



ADA & PREGNANT & PARENTING STUDENTS

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“A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.”

34 C.F.R. 106.40

- June 2007 “Dear Colleague Letter”
- June 2013 DCL on Pregnant and Parenting Students
- Regulatory Language
- Case Discussion

June 25, 2007 “Dear Colleague Letter”

- Affirms the application of the pregnancy-related portions of the regulations to athletics departments, and summarized a school’s obligations to pregnant student-athletes.

PREGNANCY, 504 & TITLE IX – 2007 DCL



- The June 25, 2007 DCL also includes:
 - Information on how to develop programs to support these students;
 - An overview of students’ rights under Title IX; and
 - Guidance on how to share your complaint if you feel your rights are not being met.
- Although the pamphlet is focused on secondary education, the DCL states that “legal principles apply to all recipients of federal financial assistance, including postsecondary education.”

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- **June 25, 2013 DCL on pregnancy and parenting students:**
 - Educators must ensure pregnant and parenting students are **not discriminated against**.
 - Educators must ensure that pregnant and parenting students are **fully supported in preparation for graduation and careers**.
 - Secondary school administrators, teachers, counselors, and parents must be well-educated on the rights of pregnant and parenting students as provided under Title IX.

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Pregnancy defined

- “Pregnancy and related conditions”:

A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's **pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom**, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.”

34 C.F.R. 106.40

Doctor's Note to Participate

- **“Schools cannot require a pregnant student to produce a doctor’s note in order to stay in school or participate in activities**, including interscholastic sports, unless the same requirement to obtain a doctor’s note applies to all students being treated by a doctor.”
- “That is, schools cannot treat a pregnant student differently from other students being cared for by a doctor, even when a student is in the later stages of pregnancy; **schools should not presume that a pregnant student is unable to attend school or participate in school activities.**”

Physician Certification

A recipient may require such a student to **obtain the certification of a physician** that the student is physically and emotionally able to continue participation in the normal education program or **activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.**”

“Thus, for example, a student who has been hospitalized for childbirth must not be required to submit a medical certificate to return to school if a certificate is not required of students who have been hospitalized for other conditions.”

34 C.F.R. 106.40

Pregnancy as Temporary Disability

A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom **in the same manner and under the same policies as any other temporary disability** with respect to any medical or hospital benefit, service, plan, or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.”

34 C.F.R. 106.40

Leave Policies

In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as **a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began."**

34 C.F.R. 106.40

PREGNANCY, 504 & TITLE IX: OCR GUIDANCE



- “When the student returns to school, **she must be reinstated to the status she held when the leave began**, which should include giving her the opportunity to make up any work missed.”
- “A school may offer the student alternatives to making up missed work, such as:
 - Retaking a semester
 - Taking part in an online course credit recovery program, or
 - Allowing the student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave.
- The student should be allowed to choose how to make up the work.”

Source: Department of Education (June 2013), Supporting the Academic Success of Pregnant and Parenting Students, p. 10.

- **NCAA Guidance**

- A pregnant student-athlete's physician should make medical decisions regarding sports participation
- A student-athlete with a pregnancy-related condition must be provided with the same types of modifications provided to other student-athletes to allow continued team participation
- Pregnant student-athlete cannot be harassed due to pregnancy
- A student-athlete whose athletic career is interrupted due to a pregnancy-related condition will typically be entitled to a waiver to extend her athletic career.

ADDITIONAL SPECIAL ISSUES TO ADDRESS



- Nursing rooms, mothers' lounges, etc.
- Children at school and in the classroom...No.
- Residence halls
 - Cannot remove prior to birth of child
 - Refund
- Labs, chemicals, exposure to diseases, etc.
 - Reasonable restrictions for health and safety (as deemed by a physician) are permitted.
- Cohort programs
- Licensure requirements

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PREGNANCY AND ADA

The Case of Sasha



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PREGNANCY & TITLE IX CASE DISCUSSION



Sasha is a gifted athlete. Her specialty is the low hurdles. Your school is very competitive and requires tryouts for the Track Team in the Spring of the year for the following fall.

Sasha is 7 months pregnant. She did not make the cut for the team at tryouts this year.

She has come to you to complain that just because she is currently pregnant and not quite as fast, she won't be pregnant in the fall and you know what a good athlete she is.

What are some possible solutions?

ADA & MENTAL HEALTH ISSUES

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504/ADA GUIDELINES REGARDING MENTAL ILLNESS: SOME IMPORTANT POINTS



- A greater percentage of students arrive at college these days with a history of emotional or mental health problems, and even more will be diagnosed during their period of enrollment at your institution.
- A student or employee with a documented mental disorder is a qualified person with a disability.
- A suicidal student or employee may reasonably be regarded as having a psychiatric disability
- As the DSS or 504 Coordinator, you must take individual needs into account but also to uphold educational standards and well-functioning work environments.

504/ADA GUIDELINES REGARDING MENTAL ILLNESS



- A student with a documented mental disorder has a qualifying disability even if they are on medication to control the disability
- Both the ADA and Section 504 Apply
 - Section 504 gives recourse to students who are discriminated against on the basis of a recognized disability.
 - The Americans with Disabilities Act (ADA) entitles students who are otherwise qualified to participate in the programs and activities of the college to reasonable accommodations once they seek qualification with the campus disability/accessibility services office.
 - However, neither law requires that a suicidal student march into the disability services office to qualify as disabled.

EXAMPLES OF A PSYCHIATRIC DISABILITY



- A mental impairment that substantially limits one or more major life activities
- Examples of mental disabilities include:
 - Major depression
 - Bipolar disorder
 - Schizophrenia
 - Anxiety disorders
 - Post-traumatic stress disorders
 - Autism Spectrum Disorders

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ADDRESSING INVOLUNTARY WITHDRAWAL



- Engaging in involuntarily removing a student or employee with a disability is complex
 - The law changed in 2011 – no longer applies to “harm to self” as a basis for involuntary withdrawal, only “harm to others.”
 - OCR says DUE PROCESS is necessary to challenge assumptions that behavior is a threat that would support involuntarily removing a student or employee from the institution
 - The institution must either follow appropriate disciplinary codes for students or employees who engage in conduct that would violate the codes of conduct, or engage in applying the ADA created “Direct Threat” Test prior to removing an individual from school or work, UNLESS there is an immediacy of harm.

“DIRECT THREAT” TEST



- A “Direct Threat” analysis applies to any individual who poses a “significant risk” of substantial harm or safety to others that cannot be eliminated or reduced by reasonable accommodation.
- To rise to the level of a direct threat, there must be a **high probability of substantial harm** and **not just a slightly increased, speculative, or remote risk.**

“DIRECT THREAT” TEST



Significant risk determination in assessing a Direct Threat must be made by considering:

- (1) the duration of the risk,
 - (2) the nature and severity of risk,
 - (3) the likelihood that the potential harm will occur,
 - (4) the proximity of the potential harm.
-

OCR is, by practice, deferential to our determination of direct threat, but they insist that we make one.

RESPONSE CONSIDERATIONS



- Involve your Accessibility/Disability Services Coordinator!
- Offer appropriate due process and follow your process if your plan is to remove from school or job involuntarily.
- Use clearly written codes and referrals based on *behaviors*, not disabilities or conditions.
- Address *actual* significant disruption to campus, not simply *risk* of disruption.
- Be consistent in referrals – the same disruptive behavior should warrant a conduct process, regardless of the individual. Sanctioning should also be consistent.
- Do not treat students or employees with disabilities differently than other students, other than providing reasonable accommodations under the law.

SOME IMPORTANT CASES

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Spring Arbor University Decision



SPRING ARBOR UNIVERSITY DECISION (DECEMBER 2010)



Facts

- A student (let's call him "John") told admissions representative that he had a disability (anxiety and depression).
- The student later reported that the admissions representative did not refer him to the school's Disability Services Office.
- The student did not independently seek accommodation from Disability Services, nor identify himself to Disability Services as an individual with a disability.
- The summer following the student's first term of enrollment, he experienced increased emotional symptoms and was diagnosed as bipolar. At school, the student engaged in cutting behaviors, uncontrolled crying, and persistently discussed his problems with other students.

Facts (continued)

- During this period of time, however, the student remained in good academic standing.
- In the fall term following his diagnosis, as a result of his behavior on campus, the Vice President and other university officials requested a meeting with the student, under the guise of a meeting with him about his “academic success.”
- The student was assured that this was not a disciplinary meeting, but immediately was confronted with “complaints” about his behaviors and presented with a Behavior Contract. The student became very upset and stated his intent to withdraw from school immediately based on medical necessity.

- The following spring, the student applied for re-admission to the university. He was informed that before he could return he was required to provide medical documentation, a release of medical treatment records, a student agreement form, and other standard elements for re-admission. The university did not require 504 plans or medical treatment documentation of other students seeking re-admission, and was not informed of these conditions when he “voluntarily” withdrew.
- The student was denied re-admission and subsequently filed a complaint with OCR based on disability discrimination under Section 504 of the Rehabilitation Act.

OCR Determination

- The OCR initially determined that although the student voluntarily withdrew from school, the institution's actions in presenting him with a behavior contract that had many elements related to mental health treatment resulted in the student being "regarded" as having a disability.
- The OCR further determined that the university then discriminated against the student, based on his disability, by imposing requirements on the student's re-admission that were not required of other students seeking re-admission to the university.

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OCR Determination

- The university argued that they were trying to ensure that the student could be successful upon re-admission.
- However, the student had never demonstrated that he couldn't be successful academically and, at the time of his voluntary withdrawal, he was in good academic standing and had never been disciplined.
- Thus, OCR determined that the university's reason was not a legitimate non-discriminatory one and was instead a pretext for disability discrimination.

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OCR Determination (continued)

- The OCR stated that a university may remove a student with a disability or deny admission to that student if the university applied a “direct threat test.”
- This test may be applied only when an individual poses a significant risk to the health and safety of others. The significant risk must represent a high probability of substantial harm and not just a slightly increased, speculative, or remote risk. In this matter, the university stated that it believed the student was a threat to himself, but not to others.

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CASE EXAMPLE: HALPERN v. WAKE FOREST



Halpern v. Wake Forest University

U.S. Ct. of Appeals, 4th Cir., (March 14, 2012)

Facts & Holding: Halpern, a medical student at Wake Forest, diagnosed with ADHD and anxiety disorder, treated with prescription medication. He did not disclose his disability, nor request any accommodations. In his program, he demonstrated seriously abusive and unprofessional conduct and frequently missed class or clinicals. His behavior continued through his two years of study and although he did not seek accommodation from the university, he was often provided an accommodation by individual professors.

HALPERN v. WAKE FOREST UNIVERSITY



Facts & Holding: He failed his internal medicine rotation and was placed on probation. He was subsequently dismissed based on a pattern of unprofessional behavior in his clinical rotations. Halpern brought suit, alleging his dismissal violated Sec. 504 and ADA because the school failed to make reasonable accommodations for his disability.

Wake Forest prevailed in this case based on the grounds that Halpern was not “otherwise qualified” as a medical student because demonstrating professionalism was a fundamental aspect of the medical school’s program. The Ct. of Appeals, reviewing the information de novo (in its entirety), upheld the decision.

HALPERN V. WAKE FOREST UNIVERSITY

Significance Of The Case: This case is significant because addressing disability and accommodations is a three part process, first the person must have a qualifying disability (or be regarded as having a disability); next the individual must be “otherwise qualified” to perform the essential functions of the job or educational program; finally, the institution must show good faith in providing appropriate accommodations.

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HALPERN V. WAKE FOREST UNIVERSITY

Significance Of The Case: In this case, the courts analyzed the “qualified individual” standard and stated that, “an otherwise qualified person is one who is able to meet all of a program’s requirements in spite of his/her handicap.” A plaintiff who asserts an ADA violation bears the burden to establish that they are qualified to perform the essential elements of a program. This is an important lesson for institutions to ensure that programs of study identify essential elements for participation

RESPONSE CONSIDERATIONS



- Involve your Accessibility/Disability Services Coordinator!
- Offer appropriate due process and follow your process if you plan to remove a student from school involuntarily.
- OR, use clearly written codes of conduct and referrals based on *behaviors*, not disabilities or conditions.
- Address *actual* significant disruption to campus, not simply *risk* of disruption.
- Be consistent in referrals – the same disruptive behavior should warrant a conduct process, regardless of the individual or the disability. Sanctioning should also be consistent.
- Do not treat students with disabilities differently than other students, other than providing reasonable accommodations under the law.

MENTAL HEALTH & ADA HIGHER ED.

The Case of Dennis



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MENTAL HEALTH & ADA

THE CASE OF DENNIS



Dennis is a first year student at your institution. He enrolled as an honors student. He wants to go to law school and be a legal advocate for the disabled. Dennis has also been diagnosed with Asperger's Syndrome. Dennis provided his documentation to your Accessibility Services Office and shared that he receives ongoing therapy to help him control his impulsive conduct.

When Dennis is aggravated, challenged, or simply strongly disagrees with another person, he will often engage in arm flapping, make loud guttural sounds, and sometimes will run around the room or out of the room or the building.

MENTAL HEALTH & ADA

THE CASE OF DENNIS



Dennis works hard to control his impulses but sometimes he just loses control. He is enrolled this term in a course called “Controversies in Politics” and since the foundation for the course is to challenge assumptions and to defend your position, there is high tension in the class as students debate various political positions. Dennis has frequently lost control in this class and has created significant disruption and frightened many of the students.

The faculty member and his Dean have come to you to determine what can be done. Dennis must take this class for his major (or if K-12, for his IB degree) and this is the only section offered. The Dean strongly feels Dennis is not qualified to be a student at your institution.

MENTAL HEALTH & ADA

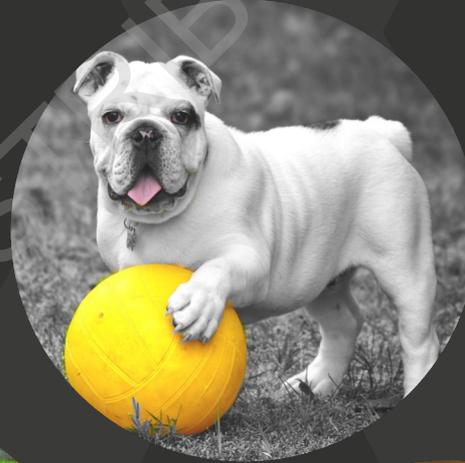
THE CASE OF DENNIS



Dennis is academically gifted and is a very nice young man when not provoked, but his conduct is creating a disruption in class. Students and parents have called your President/Superintendent and the Political Science Department wants him removed from the department.

What are some possible solutions to this issue?

WELCOME TO ANIMAL HOUSE



SERVICE ANIMALS v. EMOTIONAL SUPPORT ANIMALS

NOT FOR DISTRIBUTION

- Colleges and Universities frequently receive requests to bring service animals (as defined by the ADA) and assistance animals, which can be service animals, but also therapy, comfort, or emotional support animals (as defined by HUD) to class or in their living environment as an accommodation.
- They may make institutions more accessible for the students and enrich the educational environment by allowing the institution to be more accessible to students with a wide range of disabilities.
- BUT there is a confusing backdrop of disability-based laws that impose differing obligations and apply differently based on locations on campus.

ADA GUIDELINES RE: SERVICE ANIMALS



- Title II & III of the ADA state that a service animal may only be a dog or miniature horse that has been individually trained to do work or perform tasks for the benefit of an individual with a disability.
- Title I of the ADA, which applies to the employment context does not define “service animals,” nor require institutions to automatically permit a specific type of animal in the workplace. Rather, animals in the workplace should be treated as a “reasonable accommodation” and the employer may ask for appropriate documentation





WAIT! A HORSE? WHY?

- Miniature horses are as trainable as dogs.
- Miniature horses are hypo-allergenic.
- Miniature horses have a longer life span than a dog.
- Miniature horses are generally no larger than a big dog.

BUT...THERE ARE GUIDELINES TO CONSIDER:

- The type, size, weight of the horse, and if the facility can accommodate.
- Whether the handler has sufficient control of the horse.
- Whether the horse is housebroken.
- Whether the horse's presence compromises legitimate safety requirements.

ADA GUIDELINES RE: SERVICE ANIMALS



- “Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person’s disability.
- The Service animal does not need to be professionally trained, but cannot just be a ‘service animal-in training’ unless required by state law.
- You cannot require documentation that the animal has been certified, trained, or licensed as a service animal.
- Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.”

IMPORTANT INFORMATION REGARDING INQUIRIES ABOUT SERVICE ANIMALS AND THEIR OWNERS



- You may not ask about the nature or the extent of a person's disability.
- A qualified person with a disability using a service animal does not need to register with Accessibility Services Office, nor produce documentation of the disability because a service animal is not an accommodation. They are an extension of their handler.

You may only ask:

- If the animal is required because of a disability and/or
- What work or task the animal has been trained to perform.
- You may not require documentation of training.
- There is no special certification or licensing required for a service dog or miniature horse.

EXAMPLES OF WORK OR TASK OF SERVICE ANIMALS

- Guiding people who are blind.
- Alerting people who are deaf.
- Pulling a wheelchair.
- Alerting and protecting a person who is having a seizure
- Reminding a person with mental illness to take prescribed medications.
- Preventing or interrupting impulsive or destructive behavior for those with psychiatric disability.
- For example, for autistic students, service animals can be trained to interrupt inappropriate repetitive behavior.



IMPORTANT INFO ABOUT RIGHTS OF INDIVIDUALS WITH A DISABILITY & SERVICE ANIMALS



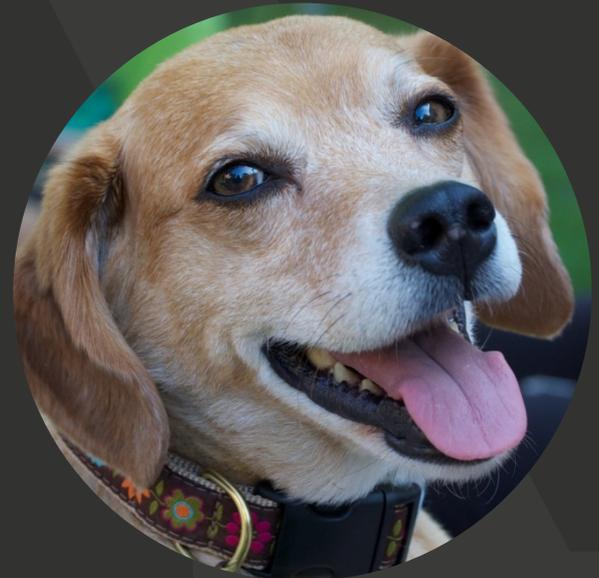
- An institution **must modify policies, practices, or procedures** to permit the use of a service animal.
- Unless:
 - The animal is out of control
 - The animal isn't housebroken
- Service animals must be permitted to accompany their handler in all areas of the institution unless their presence poses a health or safety risk.
- You may not charge a fee for a service animal even if others accompanied by a pet are required to pay a fee.
- Service animals don't have to wear a vest, ID Tag, or specific harness to identify them as a service animal.

TO REVIEW: GUIDELINES FOR SERVICE ANIMALS



- Only dogs or miniature horses who perform work or a task for an individual with a qualifying disability are considered service animals.
- Must be individually trained to do the work or task.
- Must be housebroken.
- Must remain under the care and supervision of the owner at all times via a leash or harness unless it would interfere with their work.
- May not create a disruption to the environment.
- May not pose a direct threat to the health or safety of the campus.

EMOTIONAL SUPPORT, THERAPY, COMPANION ANIMALS



THERAPY, COMPANION, AND EMOTIONAL SUPPORT ANIMALS



- May be an animal other than a dog.
- They are usually the personal pets of their handlers, and provide comfort or emotional support.
- Federal laws have no provisions requiring people to be accompanied by therapy or comfort animals in places of public accommodation that have "no pets" policies other than dwellings under the FHA.
- Therapy animals often provided by Counseling Centers during high stress times usually are not service animals.

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HUD: FAIR HOUSING ACT CHANGES THE LANDSCAPE



- The Office of Housing and Urban Development (HUD) applies a broader definition, using the term “assistance animal” when enforcing Sec 504 in the housing context.
- Assistance animals, which includes untrained emotional support (ESA), comfort, therapy as well as service animals, **must be allowed as an accommodation** for any qualified individual with a disability in any “dwelling which is occupied as a residence by one or more families”.

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EMOTIONAL SUPPORT ANIMAL REQUIREMENTS



- Those seeking to have their emotional support animal must have a qualifying disability.
- There must be an identifiable relationship or nexus between the disability and the assistance the animal provides.
- The animal that individuals with a disability wish to accompany them must be necessary to afford those persons with an equal opportunity to use and enjoy a dwelling.
- The assistance animal must meet reasonable standards for the housing environment.

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HUD GUIDELINES REGARDING ASSISTANCE ANIMALS



- As long as the animals alleviate the “effects” of the disability and the animals are reasonably supported, they are acceptable.
- Species other than dogs, with or without training, and animals that provide emotional support are recognized as “assistance animals.” Courts have also upheld that animals need not be trained, nor do they need to be dogs to qualify as “reasonable accommodations.”
- Animals who pose a direct threat to the health and safety of others; who cause substantial physical damage to the property of others; who pose an undue financial and/or administrative burden; or would fundamentally alter the nature of the provider’s operations may be excluded.

WHAT TO EXPECT FOR DOCUMENTATION FOR AN ESA



- Confirmation the individual has a mental health diagnosis.
- The documentation should be from a medical professional, trained to diagnose mental health conditions.
- Request an explanation of how the animal helps alleviate the condition.
- Have them address the potential negative effects of the person not having the animal with him/her.
- Ask if the animal has any training to do what is needed to alleviate the disability.

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ADVICE MOVING FORWARD: ESA'S



- May be limited to campus housing only.
- Should be considered on a case-by-case basis.
- The individual seeking to have an ESA must provide documentation of a qualifying disability.
- There must be a nexus between the disability and the role of the comfort animal.
- May be an animal other than a dog or horse.
- The institution may engage in the interactive process in determining the acceptance of the comfort animal, balancing the need for accommodation of the individual with the impact on the environment.

OWNER OBLIGATIONS RE. ESA'S



- The animal cannot interfere with the reasonable use and enjoyment of others living in the same dwelling.
- The animal must be caged when the owner is not in the room.
- The animal must always be under the control of the owner, either on a leash or harness or in a crate or carrier.
- The owner may not leave the animal for extended periods of time or overnight.
- The owner may not leave the animal in the care of another resident for overnight

FINAL ADVICE: REQUIREMENTS FOR BOTH SERVICE ANIMALS & ESA'S



- Must be in good health and well cared for by the owner.
- Must meet all state requirements for vaccinations and licensing.
- The owner must clean up after the animal and must appropriately dispose of all animal waste.
- The animal may not disturb, annoy, or cause any nuisance to other members of the campus community.
- They may not pose an undue threat or fear to the residence environment.
- They may not cause undue financial or administrative burden to the institution in order to provide the accommodation.
- May not fundamentally alter the nature of the institution's operations.

SOME MORE THINGS TO THINK ABOUT



- What about roommates or neighbors with allergies? Not all allergies create a disability and you need to apply common-sense to addressing.
- Allergies or fear of dogs are not valid reasons for denying access or refusing service to people using service animals.
- Decisions about acceptability of the dog may not be based on the breed of the dog.
- A person with a disability does not have superior rights to the person without a disability.

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QUESTIONS?

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THANK YOU!

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