Reasonable Accommodations: From Secondary to Post-secondary School

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- January 11, 2024

A few caveats…

This presentation is provided for informational purposes only.

This is not legal advice and **I am not an attorney**.

This presentation represents a broad and general overview of the process, and as such, it may omit discussion of relevant information that can affect its utility given a particular situation. The answer is often, “It depends;” because every case turns on specific facts.

Additionally, due to the ever-changing nature of case law, statutory/regulatory updates, complaint decisions and agency guidance, the information presented today may soon be outdated.

Today's Agenda

- The applicable laws
  - high school versus college/university/career-technical education
- The process for obtaining accommodations
  - Disability definition
  - Reasonable accommodations
  - Interactive process
  - Fundamental alteration
- Suggestions for parents/students prior to postsecondary school
- Questions

Applicable Laws

Section 504, Part E

- Letter of Accommodation (LOA)

ADA

- Title II (for state colleges/universities)
- Title III (for private colleges/universities)

Qualified Student with a Disability

A person who would be able to meet the requirements of a program in every respect except as to limitations imposed by their disability

A person who with or without reasonable accommodations meets the essential eligibility requirements to participate in the program

Disability 28 CFR § 36.105

- **A physical or mental impairment that substantially limits one or more of the major life activities of such individual;**
- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or
- Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.
- ***Physical or mental impairment*** includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: Orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.
- ***Major life activities*** include, but are not limited to: Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and the operation of a *major bodily function,* such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

Rules of Construction

(how to interpret the law)

The definition of “disability” and “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted. “Substantially limits” is not meant to be a demanding standard.

In determining whether an impairment substantially limits a major life activity, the term *major* shall not be interpreted strictly to create a demanding standard.

Whether an activity is a *major life activity* is not determined by reference to whether it is of *central* importance to daily life.

Rules of construction continued

- For example, applying these principles it should easily be concluded that the types of impairments listed below will, at a minimum, substantially limit the major life activities indicated. The types of impairments described in this paragraph may substantially limit additional major life activities (including major bodily functions) not explicitly listed
- (A) Deafness substantially limits hearing;
- (B) Blindness substantially limits seeing;
- (C) Intellectual disability substantially limits brain function;
- (D) Partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function;
- (E) Autism substantially limits brain function;
- (F) Cancer substantially limits normal cell growth;
- (G) Cerebral palsy substantially limits brain function;
- (H) Diabetes substantially limits endocrine function;
- (I) Epilepsy, muscular dystrophy, and multiple sclerosis each substantially limits neurological function;
- (J) Human Immunodeficiency Virus (HIV) infection substantially limits immune function; and
- (K) Major depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia each substantially limits brain function.

Reasonable Accommodations

- Are designed to prevent disability discrimination, i.e. give students an equal opportunity for success
  - Academics
  - Housing and residence life
  - Transportation on campus
  - Extracurricular or campus activities
  - Internships
  - Physical and Virtual environments

Reasonable Accommodations & Modifications

Academic accommodations are adjustments that do not change what the student learns. The law does not call for a reduction in academic rigor.

- Extended time on a test in a reduced distraction setting

Modifications are required to college policies, practices and procedures to prevent discrimination against a disabled student

- Lighter schedule or additional time to complete a degree

Students in postsecondary education seeking accommodations

Students must self-identify

Students must supply necessary documentation proving disability

- **From a qualified and appropriate professional**
- **Names the bona fide diagnosis/diagnoses**
- **Ideally, outlines the impact and the functional limitations of the disability**
- **Suggests accommodations—must be a nexus to the disability**

The student's disability is not shared with the professor/instructor

Faculty must protect student privacy/confidentiality

The student's LOA lasts for one semester, only

The student must follow procedures outlined in the LOA, & must discuss with each prof, each semester

Parents are not considered team members, therefore, no communication w/o a release or power of attorney

The Interactive Process

A good faith conversation between student and Disability Services staff member to review supporting documentation & to discuss the student's abilities & limitations to determine whether a student

- qualifies as an individual with a disability
- needs accommodation(s), and what those accommodations might be (as proposed by the student, DSS or other stakeholder)

The Disability Service staff member ultimately selects the accommodations and arranges the Letter of Accommodation

- The student must follow through by sending &/or presenting the letter to each prof & scheduling a time to meet to discuss.

The Interactive Process

continued

Determinations are made on a case-by-case basis

Disability Services may table decision pending add'l documentation from the student or a case review

If any accommodation is denied, alternatives must be explored & an explanation of denial provided

If the school claims the accommodation would be a fundamental alteration, a process to needs to have been followed. Let the process play out and then with the DSS office to inquire about the steps taken to determine that the request was a fundamental alteration. **Get it in writing.**

The interactive process and the Effective Communication provision of the ADA

- The interactive process, with regard to students, is not found in Section 504 or Titles II and III of the ADA. (derived from an employment context)
- Communication is seen as a mutual responsibility and both parties must engage in good faith.
- It is not a one-time event and can (should?) be ongoing
- **But what about the student with a disability who may have difficulty processing, understanding, and exchanging information?**
- "effective communication" means that **whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities.**
- https://www.ada.gov/resources/effective-communication/

Possible accommodations

- Note taker or scribe
- Assistive technology-smart pen, EF apps, TTS and STT, recording app that provides transcript or summaries,
- Accessible format, e-books, large print, audio books, braille, captioning
- Use of a computer in class or on tests—going back to blue books b/c of AI.
- Priority registration
- Course substitution or waiver—only if **not essential** to the program/course of study
- Extended time on papers and assignments (be careful with this one!)
- Early access to assignments, syllabus
- Rubrics for assignments
- Access to PowerPoint presentations used in class
- Modified seating
- Preferential seating—towards the front and away from distractions
- Emotional Support Animal—not to be confused with a service animal
- Use of accessible shuttle on campus

Essential requirements

The requirement should be essential/fundamental to the educational purpose or objective of a program or class

The process should include the following:

- the decision is made by relevant officials including faculty members;
- the decision makers consider a series of alternatives, their feasibility, cost, and effect on the academic program; and after reasoned deliberation; and
- the decision makers reach a rationally justifiable conclusion that the available alternatives would result either in lowering of academic standards or requiring substantial program alternative."

Wynne v. Tufts (1992) and Guckenberger v. Boston University (1998)

****OCR gives deference to the school on academic decisions**

Tips for transition

Transition under IDEA is supposed to prepare students…reality—students are often not ready to take the next step

High school classes—take challenging classes. Research college/program pre-requisites for admission. Take AP or community college classes. (Accuplacer)

Take your kids to nearby colleges/universities for events so that they develop of frame of reference for the plethora of choices available. There are ˜4,000 degree granting postsecondary schools in the US according to NCES.

Your child should know all diagnoses and be able to describe them and the limitations they pose.

Tips continued

- Get a part-time/summer entry level job in high school
- Develop Executive Function skills, social skills, advocacy skills…
- Learn how to do laundry, basic budgeting/banking, and cooking
- Practice problem solving
- Start the college selection process early—including the Common App
- View college websites, visit and meet with disability services staff
- Develop a realistic appraisal of skills, abilities and the job market
- Do not negate the value of CTE and Community College.

Questions???

Thank you for your time