## **The Americans with Disabilities Act and Higher Education Brief Overview**

## **Sponsored by**

## **Southwest ADA Center**

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## The information herein is intended solely as informal guidance and is neither a determination of your legal rights or responsibilities under the Act, nor binding on any agency with enforcement responsibility under the ADA.

# ***Southwest ADA Center***

# ***The Leading Resource***

### ADA & ADAAA

### Other disability related laws such as IDEA

### Making information technology accessible

## Services a wide range of audiences including

### employers

### businesses

### government agencies

### WIA Workforce System

### schools

### people with disabilities

### Education

### Expert staff are available to provide training, publications and respond to your inquiries

## Hot Line: **1-800-949-4232**

## Web Site: **www.southwestADA.org**

## Part of the federally funded **ADA National Network** www.adata.org

# **Higher Education and Students with Disabilities**

## More and more high school students with disabilities are planning to continue their education in postsecondary schools:

## Vocational / Career Schools

## Community Colleges

## Universities

# **Training Agenda**

## Laws That Apply

## High School Vs. Higher Education

## Disclosing Disability

## College Access Obligations

## What Colleges Are Not Required To Do

## Requesting Access

## Disability Documentation

## Determining Academic Adjustments

## Denial Prohibition Based On Future Requirements

## Library Materials

## College Paperwork Accessibility

## Conduct Codes

## Discrimination Complaints

## Resources

# **Laws that Apply to Post Secondary Education**

## **Section 504 of the Rehabilitation Act of 1973**

### Includes schools that accept students receiving grants to support their education - must assure that the program accommodates students with disabilities

## **Americans with Disabilities Act**

### Title II (State and Local Government)

### Title III – Public Accommodations

#### (Business and Non-Profits)

# **High School**

## **Section 504 and ADA Title II** (state/local gov.) protect elementary, secondary, and postsecondary students from discrimination – sometimes referred to as “504 students”

## Free appropriate public education (**FAPE**) to each child with a disability in the district’s jurisdiction

## **IDEA** = creation of an Individualized Education Plan (IEP) that will help the student participate in the general curriculum as much as possible

# **Higher Education**

## Students compete for admission & must be qualified **without consideration to disability**

## Students participate in the general curriculum

### No continuum of placement exists

## Provide equal access to students with disabilities which can include

### Academic accommodations / adjustments

### Effective communication

### Architecturally accessible

## **Do NOT** have to fundamentally alter programs or lower academic standards to create access

## **Do students have to inform a postsecondary school of their disability?**

## No

## Unless requesting an academic adjustment or effective communication or to ensure assignment to accessible facilities

## Unless requesting accessible campus housing

## Disclosure of a disability is always voluntary

# **College’s Access Obligations**

#### Physical Barrier Removal

#### Program/Policy Barrier Removal

#### Effective Communication (including Websites)

#### Academic Adjustments and Accommodations

### The appropriate academic adjustment must be determined based on the individual student’s disability and individual needs

### **NOTE:** Equal participation in school sponsored extra curricular activities

# **Academic Adjustments Could Include**

## Auxiliary aids and services (effective communication)

## Modifications to academic requirements as necessary to ensure equal educational opportunity (unless fundamentally alters)

## **Access Examples**

### arranging for priority registration to assure access

### consideration for absences or reducing a course load

### providing note takers, recording devices, or scribes, alternative formats

### sign language interpreters

### extended time for testing and/or distraction reduced environment, breaks

### equipping school computers with screen-reading, voice recognition and other technologies

### other kinds of assistive technology and adaptive software or hardware

### if telephones are provided in dorm rooms, provide a TTY

### Substituting one course for another

# **Not Required To Lower Or Substantially Modify Essential Requirements**

## The school may be required to provide extended testing time, but it is **not required to change the substantive content** of the test and must assure it can obtain what the test is trying to measure

## Does not have to make adjustments that would **fundamentally alter** the nature of a service, program, or activity, or that would result in an undue financial or administrative burden

## Also…….

## Does **not have to provide personal** attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature, such as tutoring and keyboarding

# **Requesting Access**

## Student must inform the school of their disability and need for an academic adjustment

### Postsecondary schools are **not required to identify** a student as having a disability or to automatically assess the student’s needs

## May require the **student to follow reasonable procedures** to request an academic adjustment

## The **student is responsible** for knowing and following those procedures

## In their publications providing general information, postsecondary schools should include information on the procedures and contacts for requesting an academic adjustment

## Many schools also have staff/programs whose purpose is to assist students with disabilities (**Disability Services Office**)

# **Requesting An Academic Adjustment**

## The Student can request an academic adjustment at any time

## BUT really should request it as early as possible because some academic adjustments may take more time to provide than others

## The student should follow the school’s procedures to ensure that the school has enough time to review the request and provide an appropriate academic adjustment

## The college can require documentation (at the student’s cost) showing a current disability and how the need for an academic adjustment is related

# **Post Secondary Schools May Set Reasonable Standards For Documentation**

## Require documentation from an appropriate professional, such as a medical doctor, psychologist, or other qualified diagnostician

## May include:

### the credentials of the diagnosing professional

### a diagnosis of current disability, with supporting information of date of the diagnosis and how that diagnosis was reached

### information on how the disability affects a major life activity

### information on how the disability affects academic performance

## The documentation should provide enough information for the school to decide what is an appropriate effective academic adjustment

# **Documentation Continued**

### Some deference should be accorded to the records if there is a great deal of evidence in existing records that indicate the **disability** has **not changed over time**

## The student’s **SOP** may help identify services that have been effective

### IDEA requires the high school to provide a “summary of academic achievement and functional performance.”

### The **Summary of Performance** (SOP) should include recommendations about ways to help meet post-secondary goals and should be completed during the final year of a student’s high school education.

### The document should contain the **most updated information** on the performance of the student and include both the student’s **abilities and aspirations**

# **Documentation Continued**

## An **IEP or Section 504 plan** may help identify services that have been effective for the student

## **BUT** the IEP is **generally not sufficient documentation** because of the differences between postsecondary education and high school education

### What is needed to meet the new demands of postsecondary education may be different from what worked for the student in high school

### Also, in some cases, the nature of a disability may change

## If the documentation that the student has does not meet the postsecondary school’s requirements, the college **can require additional** documentation

## The student may need a **new evaluation** in order to provide the required documentation (at student’s cost)

# **When Can Request and Scope**

## To validate the existence of the disability where the disability is **not apparent**

## To establish **current** disability and the **link between** the accommodation requested and the disability

## Should be **strictly tailored** to eliciting information necessary for determining ADA or 504 coverage.

## Documentation with student interaction **should focus on** what is needed to provide equal access through academic accommodations, as well as modifications of policies and procedures.

## Schools should set **reasonable standards for documentation** and can require **reasonable procedures** that the student is responsible to follow.

# **Is This Sufficient Documentation?**

## I am treating X for attention deficit disorder. X has significant impairment of concentration and of ability to sustain a task, and these difficulties are only partially helped by medication. On medical grounds, X should be accommodated in having take-home exams-which will in fact, be a far better measure of her mastery of the material.

# **College Found Documentation Insufficient**

## The university required students to present documentation that addresses:

## a) current level of cognitive functioning;

## b) criteria used to reach diagnosis;

## c) recommended accommodations, i.e., extra time on exams, separate test setting, note takers.

# **Documenting Learning Disabilities**

## Deference to treating professional?

## How recent must documentation be?

## *Currency is key.* ***Does it reflect current functioning?***

## What qualifications may be required of professionals doing the evaluations?

## Recommendation: AHEAD guidelines for diagnosing learning disabilities

# **Learning Disabilities**

### Documenting the existence of a learning disability can be **extremely complex.** There are **many different types** of learning impairments, which have **varying impacts** on different life activities.

### Some experts allege that in order for someone to establish that he or she currently has a learning disability, documentation should not date **back more than three years** (because they change over time).

### If there is a **great deal of evidence in existing records** and documentation from a professional with appropriate expertise who is acquainted with the individual showing that the **disability has not changed**, then some deference should be accorded to the records.

### Often individuals with learning disabilities have difficulty processing language, so **math and foreign language courses** often pose great difficulty.

# **Academic Accommodations**

## **Schools have significant leeway** in making decisions about academic and curricular requirements, as well as the ability to structure programs to accommodate students with disabilities.

## It is vital that **schools carefully consider each student’s access needs** and analyze whether and how each student can be accommodated.

## Academic standards and requirements do not need to be lowered or altered in any way, as long as accommodations are provide so that students with disabilities can meet those academic standards.

# **Determining Appropriate Academic Adjustments**

## College will review the student’s request in light of the essential requirements for the relevant program

## The student should expect the college to work with him/her in an **interactive process** to identify an appropriate academic adjustment

## If the student has requested a specific academic adjustment, the school may offer that academic adjustment, or it may offer an **effective alternative**

## The school **may also conduct its own evaluation** of the student’s disability and needs at the college’s expense

## The student should NOT expect the postsecondary school to invite **parents** to participate in the process

# **Goal: Equalize opportunity for the student to compete and to have academic opportunity.**

## Colleges should

### **Educate instructors** in their responsibilities and include them in the ADA analysis process.

### Train instructors on when to bring to the Student Disability Services Coordinator into a **difficult situation**.

## The College should make sure that they have **explored all possible options** in carrying out their ADA obligations.

## Student has the **right of refusal** of the accommodation, however, if what is being offer creates equal access, the **school is not obligated** to do anything else or more.

# **Academic Adjustments**

## **What if the academic adjustment is not working?**

### The student should let the school know as soon they can

### It may be too late to correct the problem if the student waits until the course or activity is half way through or near completion

### The student should actively work with the college to resolve the problem

## **May a postsecondary school charge for providing academic adjustments?**

### No

### **NOTE:** Nor may it charge students with disabilities more for participating in its programs or activities than it charges students who do not have disabilities

# **Denial Based On Future Requirements or Expectations Prohibited**

## An applicant or student may not be denied an opportunity to take a class or examination because of **doubts** about his or her abilities to meet the **future requirements** of the future profession. Opportunity must be based on that particular class or examination qualification criteria / standard.

# **Library Materials Must Be Made Accessible**

## Students with disabilities must have the appropriate **auxiliary aids** needed to locate and obtain library resources.

## Basic index of holdings (whether formatted on-line or on index cards) must be **accessible**.

### For example, a screen and keyboard (or card file) must be placed within reach of a student using a wheelchair.

### If a Braille index of holdings is not available for blind students, readers must be provided for necessary immediate assistance.

# **Significant & Basic Materials Must Be Made Accessible**

## Written materials (Class notes, Examinations, etc.)

### Public Law 104-197...

### **Permits reproduction of books in alternate formats** for individuals with disabilities

## Articles and materials that are **library holdings** and are **required for course** work must be accessible to all students enrolled in that course.

### This means that if material is required for the class, then its text must be read for a blind student or provided in Braille or on tape or some other information technology method (comparable to non disabled students).

## A student's **actual study time** and use of these articles are considered personal study time and the school has no further obligation to provide additional auxiliary aids.

# **Filling Out Financial Aid, Student Employment Applications, Or Other Forms Of Necessary Paperwork**

## Must provide services to disabled students who may need assistance in filling out aid applications or other forms.

## If the student requesting assistance is still in the process of being evaluated to determine eligibility for an auxiliary aid or service, help with this paperwork by the school is mandated in the interim.

# **Student Conduct Codes**

## If a student's enrollment is terminated for disability-related reasons:

### conduct that unreasonably interferes with learning or

### poses a direct threat to the health or safety of others or

### takes a voluntary leave of absence due to disability-related conditions

### Make sure to have clear policies, relevant documentation, due process procedure

## Must readmit the student when the condition is stabilized.

# **Discrimination Complaints**

## Section 504 Coordinator / ADA Coordinator / Disability Services

## College’s grievance procedures (both formal & informal processes)

### Should include an immediate appeal & opportunity in grieving exam modifications or lack of

## Student should be prepared to present their case

## If dissatisfied with the outcome of the college’s grievance procedures or want an alternative - may file with OCR or in a Court

## OCR complaint process: **www.ed.gov/ocr/docs/howto.html**

## Office for Civil Rights, U.S. Department of Education Washington, D.C. 20202-1100 Phone: 1-800-421-3481 / TDD: 1- 877-521-2172 Email: **ocr@ed.gov** / Website: **www.ed.gov/ocr**

# **Resources**

## **Association on Higher Education and Disability**

## AHEAD is a professional membership organization that actively promotes full and equal participation by individuals with disabilities in higher education [www.ahead.org](http://www.ahead.org)

## **Job Accommodation Network**

## A free consulting service designed to increase the employability of people with disabilities, which includes providing individualized worksite and **other settings** (such as postsecondary schools / students) accommodations solutions.

## 800-526-7234 (V/TTY) / [www.askjan.org](http://www.askjan.org)

## **National Center on Accessible IT in Education** [www.washington.edu/accessit](http://www.washington.edu/accessit)

## **TRACE Center** http://trace.wisc.edu/

## **Students with Disabilities Preparing for Postsecondary Education**

## Know Your Rights and Responsibilities

## U.S. Department of Education Office for Civil Rights

## http://www2.ed.gov/about/offices/list/ocr/transition.html

## **Auxiliary Aids and Services for Postsecondary Students with Disabilities**

## Know Your Rights and Responsibilities

## U.S. Department of Education Office for Civil Rights

## http://www2.ed.gov/about/offices/list/ocr/docs/auxaids.html

## **PACER Center**

## ADA Q & A: Section 504 & Postsecondary Education

## www.pacer.org/publications/adaqa/504.asp

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