

***Conversations with Faculty:
Assessing Student
Accommodation & Accommodation Denial
in Higher Education***

APRIL VIRTUAL CONFERENCE 2021
October 18-22, 2021

PRESENTER:

Julie Ballinger, Southwest ADA Center Affiliate

V: 505.797.8612 / juliedballinger@outlook.com

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



National Network

*Information, Guidance, and Training on the
Americans with Disabilities Act*

- **The Southwest ADA Center** (www.southwestada.org) is part of the ADA National Network and serves NM, TX, AR, LA, and OK.
- Each Regional ADA Center focuses on its region's unique needs.
- To find and contact YOUR regional ADA Center:
 - ✓ Go to www.adata.org
 - ✓ Call 1-800-949-4232

The ADA National Network is funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR).

The ADA

“This Act is powerful in its simplicity. It will ensure that people with disabilities are given the basic guarantees for which they have worked so hard: independence, freedom of choice, control of their lives, and the opportunity to blend fully and equally into the rich mosaic of the American mainstream.”

President George Bush

Signing of the American with Disabilities Act of 1990

Federal Legislation - Higher Education

- **Section 504 of the Rehabilitation Act of 1973**
 - If receive federal funding cannot discriminate on the basis of disability.
- **Title II (State and Local Gov.) and III (Business and Non-Profits) of the Americans with Disabilities Act**
 - Program Access (ADA Title II) = Higher Education programs must be accessible to and useable by people with disabilities, including learning online programs.
- **Fair Housing Act, Sec. 504 and ADA = Campus housing**

Southwest ADA Center Publication

***Conversations with Faculty:
Assessing Student Accommodation &
Accommodation Denial in Higher Education***

Julie Ballinger, MA, Southwest ADA Center Affiliate, Author
Melanie Thornton, MA, Southwest ADA Center Affiliate, Contributing Author

This guide will give potential and present students, advocates, and higher education professionals an organized, straightforward tool to use when engaging, educating, and resolving issues with faculty regarding academic disability-related accommodations. This guide can be share with anyone and everyone.

www.southwestada.org/html/publications/schools/postsecondary/ConversationsFaculty.html

Training Objective

To give students, advocates, and higher education disability resource professionals an organized, straightforward tool to use when engaging, educating, and resolving issues with departments and faculty regarding academic disability-related accommodations.

ADA Amendments Act

Starting with the law

SEC. 6. RULES OF CONSTRUCTION.

(a) Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 et seq.) is amended—

(1) by adding at the end of section 501 the following:

“(f) FUNDAMENTAL ALTERATION.—Nothing in this Act alters the provision of section 302(b)(2)(A)(ii), specifying that **reasonable modifications in policies, practices, or procedures shall be required, unless** an entity can demonstrate that making such modifications in policies, practices, or procedures, **including academic requirements in postsecondary education**, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.”

An adjustment can **ONLY be denied IF** it can be shown that it will either:

1. Fundamentally **alter** the class, requirement(s), or program
2. Give the student an **unfair advantage** over other students (exceeding equal access)
3. Result in **undue financial** and **administrative burden**

Shift away from

- the approach where the Student Disability Services Office has the burden of “**convincing**” the particular academic department or instructor to provide the accommodation/modification.
- “The ability of a **disabled student services office to persuade** an instructor or academic department to provide an adjustment / accommodation **should not be** the determining factor in whether the student is accorded an accommodation to which she or he is entitled.”

(US Dept. of Education Letter - Mt. San Antonio College Voluntary Resolution)

Before The Accommodation Analysis

Start with a conversation that:

- helps the instructor understand the purpose of the accommodation

and

- helps the disability service professional understand the nature of the course or exam and how the accommodation fits within the specific context.

If a conflict still exists.....

A clearly articulated written procedure

- “for addressing such conflicts, including designation of an administrator with authority over the parties and responsibility to resolve accommodation disputes, is an effective method for ensuring institutional compliance with Section 504 & Title II.”*
- The premise of a formal procedure is that the educational institution has a "real obligation ... to seek suitable means of reasonably accommodating a [disabled] person and to submit a factual record indicating that it conscientiously carried out this statutory obligation.”**

**(US Dept. of Education Letter - Mt. San Antonio College Voluntary Resolution)*

*** (Wynne v. Tufts Univ. Sch. of Med., 932 F.2d 19, 25-26 (1st Cir. 1991))*

Effectively framing to Academic Departments

- Understanding that a denial could mean a **DENIAL of CIVIL RIGHTS**.
 - Meaning that this is a very serious issue and that the instructor must be fully prepared to justify their decision to the student and even possibly OCR and/or the student's lawyer.
- The **instructor must take an active role** of denial rather than a passive one of just disagreeing with the College's Disability Services or the student.
- Is the **denial defensible**?

Assessing Student Accommodation & Accommodation Denial Guide

(Instructor's Analysis)

1. What are the instructor's general class policies and process and how does that affect equal access determinations? Do these policies include how each individual disabled student's access needs are determined and met?
2. Will or does the granted accommodation(s) directly correlate with the student's disability or barriers?
3. What is Student Disability Services recommending and why? How have these suggested accommodation(s) or modification(s) been taken into consideration?

Instructor's Analysis continued

4. What the class is designed to do and measure should be carefully examined. What knowledge is the professor teaching, what activities are being used to determine/measure the student's understanding, implementation, and expression of gained knowledge?

For example, what is the test truly measuring and how does the requested accommodation affect or not affect this measurement?

5. Does the requested accommodation lower the learning standards? If so, **exactly how?**

Instructor's Analysis

6. Does the requested accommodation **fundamentally alter** the class requirement(s)? If so, **be very detailed** in how this is the case.

7. Does the request give the student an **unfair advantage** over other students? If so, **exactly how?**

Note: Regarding the unfair advantage – it can't just be that the accommodation gives the student equal access and removes the barriers – but that the accommodation **actually exceeds equal access** by giving an unfair edge.

Instructor's Analysis

8. Would the accommodation result in **undue financial or administrative burden**? If so, **be very specific how.**

Burden determination **must involve** the head of the college or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

Instructor's Analysis

9. What **other equally effective accommodations can be considered and provided** that will offer equal access for the student if the instructor denies the requested accommodation?

10. Does the **appeal process afford immediate opportunity** for the student to have their petition addressed in a timely manner in order to **prevent irreparable harm** to the student if their appeal prevails?

Remember -- an adjustment can **ONLY be denied** **IF** it can be shown that it will either:

1. Fundamentally **alter** the class, requirement(s), or program
2. Give the student an **unfair advantage** over other students (exceeding equal access)
3. Result in **undue financial** and **administrative burden**

Essential Program Requirements?

Before a decision that a class or program requirement is essential the request should be **carefully reviewed adhering to specific procedural guidelines** that includes debate about the nature and fundamental requirements of the particular class or program, subjecting it to a substantive review.

Class Substitution

- Consideration of **class substitution or waiver** should be taken into serious consideration, barring fundamental alteration, **if no** academic accommodation can be given.
- Does the college have a broad suite of courses to choose from that steer students, in addition to gaining a specified profession, to receive a **well-rounded** education?

Future Requirements

- A denial of an accommodation **CANNOT** be justified based on the instructor's personal doubts about the student's ability to meet **future** requirements of the degree or profession.
- The denial or approval of an accommodation should be based on the **present** class or program requirement(s) only.
- Note: AHEAD has excellent training materials on this subject.

Denial of Accommodation

- If the student believes in the end that the college is making a unjust decision of a denial, then disabled student services has the role of **informing the student of their right** to appeal and/or to file with OCR.
- Once again, to prevent irreparable harm, the college should have a **procedure in place** where the disabled student services or student is allowed to easily and quickly “move up” the ladder of authority in the appeal process.
- Having this type of procedure may also help to **reduce formal grievance** filings with OCR.

Discrimination Complaints

- Section 504/ADA Coordinator / Disability Services Office / Equal Opportunity Officer
 - College's grievance procedures (both formal & informal processes)
 - 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 directly 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 / Web site: www.ed.gov/ocr

Note – OCR provides technical assistance upon request.

Resources



National Network

*Information, Guidance, and Training on the
Americans with Disabilities Act*

- **The Southwest ADA Center** (www.southwestada.org) is part of the ADA National Network and serves NM, TX, AR, LA, and OK.
- Each Regional ADA Center focuses on its region's unique needs.
- To find and contact YOUR regional ADA Center:
 - ✓ Go to www.adata.org
 - ✓ Call 1-800-949-4232

The ADA National Network is funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR).

AHEAD

Association on
Higher Education
And Disability®

www.ahead.org

- AHEAD offers an unparalleled member experience for those who are invested in creating welcoming higher education experiences for individuals with disabilities.
- Informed by its diverse membership, AHEAD delivers exceptional development opportunities through conferences, workshops, webinars, publications, and consultation;
- fosters community and member networking;
- informs members of emerging issues relevant to disability and higher education in the legislative and regulatory spheres; and
- disseminates data, promotes research, and furthers evidence-based practice.
- **Many membership options – including a student membership.**