Serving Students & Protecting Colleges: Understanding the ADA and Section 504

Foothill College
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Section 504 of the Rehabilitation Act

Why is Section 504 important?

- **It was the first comprehensive cross-disability law patterned after the 1964 Civil Rights Act**
- **It took historic actions to implement the regulations**
- **It is the infrastructure for Title II of the ADA**

Section 504 of the Rehabilitation Act

- **Part E: Postsecondary Education**
  - **With its own definition of "qualified"**
  - **Admissions**
  - **Separate is not equal**
  - **Academic adjustments and auxiliary aids**

Section 504 of the Rehabilitation Act

- **Nondiscrimination tied to every public/private school college and university that receives federal funding assistance**

“Qualified Individuals”

- **Post-secondary disability law only**
- **Protects “qualified individuals”—persons who, with accommodation, can meet essential technical and academic standards**

The Americans with Disabilities Act

Americans with Disabilities Act (ADA)

- **Act amended 2008**
- **Regulations promulgated Sept 15, 2010**
  - **Final rules took effect March 15, 2011.**
  - **Compliance with the 2010 Standards for Accessible Design was permitted as of Sept 15, 2010, but not required until March 15, 2012.**

Americans with Disabilities Act (ADA) Jurisdiction

- **Title II of the ADA: state and local government entities (California Community Colleges)**
- **Title III of the ADA: every private elementary, secondary and post-secondary school because they are "public accommodations" [open to the public] - stadiums, theaters, conference centers**

Comparing Section 504 to Title II

- **Title II:**
  - **No Federal financial assistance required**
  - **50 versus 15 employees**
  - **Better for "sensory impairments"**
- **Section 504:**
  - **Generally more education-specific regulations**
  - **May be limited to solely discrimination**

Complying with the ADA

- **The college is the legal entity**
  - **Anyone can bring the college into non-compliance**
    - **Adjunct faculty/visiting professors/ teaching assistants (anyone who administers examinations)**
    - **Police & security services (service animals and students with psych disabilities)**
    - **Work-study students**
    - **Other students (hostile environment)**
    - **Performances/game ushers/ticket takers**

504/ADA Coordinator

- **The College President should designate a 504/ADA Coordinator at a sufficiently high administrative level, to ensure authority in addressing campus-wide access issues.**
- **The college shall make available the name, office address, and telephone number of any designee.**
- **The Grievance Procedure should be published in the college catalog.**

California Government Code Section 11135

Nondiscrimination tied to state funding applies to the whole institution

To Whom Do These Laws Apply?

- **Students**
  - **In academic and non-academic settings**
  - **In field placements**
  - **In athletic and social events**
  - **In the "virtual world"**
- **Parents and visitors**
- **The non-retaliation provisions apply to everyone**

The College Must Define Responsibilities and Clear Lines of Authority for Compliance

- **Academic adjustments**
- **Auxiliary aids**
- **Alternate media**
- **Program access**
- **Facilities access**

The College Must Ensure:

- **Integration of disability compliance into all other functions:**
  - **Campus-wide strategic planning**
  - **Purchase of technology**
  - **Design of information technology**
  - **Facility planning**
- **Training for everyone**
- **A well-constructed grievance and complaint investigation system**

This individual is “qualified" under the 504/ADA in that he/she meets:

- **Essential prerequisite academic and technical requirements of the college, and**
- **With accommodation, can meet the continuing academic and technical requirements**

The accommodation must be requested by the student and supported by documentation regarding the disability and functional limitation.

Academic Accommodations under ADA/504

- **A college shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified … student with a disability.**
- **Unless:**
  - **Directly related to a licensing requirement**
  - **Or, would cause a fundamental alteration to the program of instruction**

Academic Accommodations under ADA/504

- **Not required if would result in undue financial and administrative burdens**

NOTE: However, OCR has never seen a case where a public entity "the college" has won on these grounds.

- **These burdens are not carried by DSPS or academic department, but the college and district as a whole**

Testing Accommodations under ADA/504

- **Must provide examinations in form that assesses achievement and not the disability**
- **Usually does <u>not</u> require a different exam format but modification of time, environment, physical requirements for acquiring questions and communicating answers**

Auxiliary Aids under 504/ADA

- **Institution cannot let a student be excluded or denied benefits of a program because of absence of auxiliary aids (interpreters, RTC, alt media)**
- **Examples in regs: Taped texts, sign language interpreter, assistive computer technology, readers in library, adapted lab equipment, "reading machines," etc.**

Effective Communication: ADA/504 Requirements

- **Must be "as effective as" communication with non-disabled persons**
- **Applies to applicants, participants, members of the public**
- **"Appropriate" auxiliary aids & services where necessary for equal opportunity**
- **Give "primary consideration" to requests of person with disability but not required if equally effective alternative available**

Personal Services: Section 504 and Title II Exception

- **Law does <u>not</u> require provision of "personal devices or services"**

  (e.g., wheelchairs, prescription eyeglasses or hearing aids, readers for <u>personal</u> use or study, assistance in eating, toileting, or dressing)

Accommodation Processes

- Request for accommodations by student
- Documentation
- Interactive duty in determining appropriate accommodations
- Provision of academic accommodations in a timely manner

Accommodation Process

- **College must tell the student where he/she can apply for services**
- **"Magic words" cannot be required**
- **The student's words must reasonably reflect an intention to identify his/her disability and receive an accommodation**

Accommodation Process

- **Documentation of physical or mental impairment**
  - **Determination of functional limitation(s)**
- **Determination of whether academic accommodations are necessary:**
  - **What is the nexus between functional limitation and requested accommodation?**
  - **Interactive process**

Accommodation Process

- **The interactive process applies to documentation of a disability**
- **Documentation requirements must be reasonable**
- **Currency requirement must be reasonable and logically related to the nature of the disability**
- **Evaluator requirements must be consistent with the professional expectations of the field**

Accommodation Process

- **What should the accommodation be?**
  - **May well include faculty**
  - **An interactive process or a "diligent and conscientious search" for an effective accommodation, but not necessarily the one proffered by the student**
  - **More deference for sensory impairments**

Academic Decision-Making

- **Courts grant deference to academic decision-making in the absence of evidence of disability-related bias, provided the college undertook a thorough and balanced decision-making process.**

Diligent and Conscientious

- **Do not speculate that a suggested accommodation is not feasible.**
- **Sufficient information must be gathered from the qualified disabled student and DSPS staff as needed to determine what accommodations are necessary.**
- **The denial of a request for accommodation "without consulting the student or any person at the college whose job it was to formulate appropriate accommodations" has been found to be "a conspicuous failure to carry out the obligation 'diligently and conscientiously' to explore possible accommodations."**

Typical Accommodations (1)

- **Reduced course load-- to a point (continuity may be a legitimate limitation)**
- **Extra time on examinations and assignments, homework, take home exams-- to a point**
- **Break time on exams**
- **Priority registration**

Typical Accommodations (2)

- **Books on tape or e-text**
- **Note taking assistance**
- **Adaptive technology**
  - **Spell-checker, grammar checker, calculator**
  - **E-speech**
  - **Speech to text**
  - **Kurzweil**

Accommodations Provided on a Case-by-Case Basis

- **More than double time on examinations and/or assignments – course continuity is a legitimate factor**
- **Modified examination format**
- **Course substitution; even less likely - course waiver**
- **Late withdrawal with/without penalty**

Accommodations Students May Want That Aren't Required

- **After-the-fact accommodations**
- **Individualized or small group instruction, unless available to everyone**
- **An editor or proofreader provided by the school, unless available to everyone**
- **Waiver of essential course requirements like homework, research papers, lab reports—though timelines may be modified**

Accommodations That Are *Never* Required

- **Unauthorized academic adjustments**
- **Anything that lowers academic standards or otherwise fundamentally alters the program instruction**
- **Isolation in a program that requires collaboration**
- **Providing services off site or outside the United States**

Accommodations That Are *Never* Required (continued)

- **Providing examinations at an off-campus location (e.g., home or hospital)**
- **Personal attendant, personal monitor, or personal supervision (e.g., to administer medication or serve as a "behavior monitor")**
- **Re-teaching the curriculum**
- **Reassigning the student from a teacher the student doesn't like to one s/he does**

Grievance Procedures

- **A deliberate and conscience process of reaching a rationally justified conclusion**
- **Multiple faculty, including some outside the department**
- **Inclusion of DSPS or other disability experts**
- **Testimony accepted from student(s)**
- **Objective consideration of why a requirement is fundamental**
- **Search for alternate accommodations, if the requested one won't work**

Grievance Procedures

- **Publish grievance procedures where they can easily be found**
- **Designate one person to oversee process and conclusion**
- **Respond, promptly, in writing**
- **Document complaint, responses and conclusions!**
- **Do not keep student "twisting in the wind" while making decisions**

Deference During Dispute

- **Academic institutions, making academic decisions, within their areas of expertise, will receive substantial deference from the courts and OCR**
- **Generally, professors have substantial expertise pertinent to accommodations, but not to qualification as disabled**

The Bottom Line on Accommodations

- **With the benefit of accommodations that do not fundamentally alter the nature of the program, students with disabilities must meet all essential academic and technical expectations of a college**
- **Colleges will be accorded considerable deference in what is essential or fundamental, but the deference must be earned through adherence to a diligent procedure**

The Bottom Line on Accommodations

- **Students may ask for accommodations at any time, but they will be required to first document their disabilities**
- **They do not have to utilize DSPS in order to request accommodations**
- **With our wounded veterans arriving on campus, they may not utilize or even know about DSPS**
- **Requests are not retroactive and students are responsible for the consequences of not requesting an accommodation**
- **Implementation of the accommodations must be initiated in a timely manner**

Basic Legal Requirement under 504/ADA

- **Both prohibit colleges from denying people with disabilities equal opportunity to participate in programs, services and activities because their facilities are inaccessible to, or unusable by, disabled persons**

Location of Electronic Barriers to Equal Access to Information

- **Web sites**
- **Distance learning**
- **Computer labs & class workstations**
- **E-mail systems**
- **Online services (e.g., course registration)**
- **Library services (e.g., catalog systems)**
- **"Business services" (e.g., ticketing)**

How accessible are your websites?

- **The National Federation for the Blind has just won a lawsuit against the Law School Admissions Council because their website was not fully accessible to applications who are blind.**
- **NFB has also filed several suits with the U.S. Department of Justice regarding inaccessibility of on-line applications.**

The Most Common Misunderstandings Leading to *Over* Compliance

- **"I had this accommodation in high school"**
- **Mom and dad want *you* to be a parent**
- **Focusing on undue burden rather than fundamental alteration**
- **Not requiring a nexus between the diagnostic information and the accommodation**

It Takes a College

- **DSPS is funded under Title 5 to provide assistance and support to the college in meeting its obligations under Title II of the ADA and Sections 504 and 508 of the Rehabilitation Act.**
- **If and when DSPS funds are exhausted in providing support services to qualified students with disabilities, the college is still required to meet its obligations under state and federal law to provide services and accommodations.**