



EDUCATING STUDENTS WITH DISABILITIES AT THE POST SECONDARY EDUCATION LEVEL¹

Arizona State University is subject to the provisions of both the Rehabilitation Act of 1973 ("Section 504") and the Americans with Disabilities Act of 1990 ("ADA").

No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity. As a recipient of federal financial assistance, as well as being a publicly funded state university, ASU is considered to be a public entity. All the operations of ASU constitute a "program or activity" under §504. Services, programs and activities covered under these laws include: any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity. 34 CFR §104.43.

This memorandum examines the University's responsibilities under these federal laws in the area of academics, *e.g.*, classroom instruction, academic advising and the formulation of programs of study, undergraduate and graduate programs, research assistantships, teaching assistantships, testing.

What is meant by the term "individual with a disability"?

Any individual who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment is considered to be an individual with a disability. §504 and ADA .

Who is considered to be a "qualified individual with a disability"?

An individual with a disability who, with or without reasonable modifications to the rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

What types of conditions constitute a "physical or mental impairment"?

Any physiological disorder or condition, cosmetic disfigurement, or any anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal, special

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sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

Examples of physical and/or mental impairments include: contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction and alcoholism.

Excluded from the definition of physical or mental impairment are: homosexuality, bisexuality, transsexualism, transvestism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders, compulsive gambling, kleptomania or pyromania; or current illegal drug use.

What is considered to be a "major life activity"?

Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working are examples of major life activities.

What does the term "substantially limit" mean?

An impairment must substantially limit a major life activity for a physical or mental condition to rise to the level of a "disability." Factors that need to be considered include: (a) the nature and severity of the impairment, (b) the duration or expected duration of the impairment and (c) the actual or expected permanent or long-term impact of, or resulting from, the impairment. For example, an eye infection from the over wearing of contact lens that can be treated with a few days medication and the individual wearing eye glasses would not be considered a visual disability. However, if an eye infection was left untreated and resulted in permanent scarring with reduced vision that could not be corrected solely with eye glasses, a visual disability might very well be found to exist.

Can the University make preadmission inquiries into whether a prospective student is disabled?

No. Preadmission inquiry as to whether a student is disabled is not permitted. But a school may seek information to make a determination that an individual can perform the essential functions of the academic program. Institutions of higher education are given considerable deference in admissions determinations "absent proof that its standards and its application of them serve no purpose other than to deny an education to handicapped persons." *Doe v. New York University*, 666 F.2d 761, 776 (2d Cir. 1981).

What are the relevant issues that a University must look at when deciding whether to admit a qualified individual with a disability?

When deciding whether to admit a qualified individual with a disability, ASU must:

1. make a factual determination as to whether the student meets the academic and technical standards requisite to admission or participation in the educational program or activity;

if yes, then the student should be granted admission.

if no, then the university must determine whether a "reasonable accommodation" exists which will allow the individual to successfully participate in the academic program. An individualized determination must be made. "The Rehabilitation Act forbids discrimination based on stereotypes about a handicap, but it does not forbid decisions based on the actual attributes of the handicap." *Anderson v. University of Wisconsin*, 841 F.2d 737, 740 (7th Cir. 1988).

How does the University learn of a student's disability?

It is the responsibility of the student to inform the University of any disabling condition if the student is requesting a reasonable modification. ASU may require the student to provide current medical documentation to substantiate the existence of the disability. At ASU, students who are requesting accommodations for a disability should contact the Office of Disability Resources for Students at 965-1234. A staff member in that office will assess each student's individual needs, develop an individual academic program recommendation and refer the student to other university resources, as appropriate. *See generally*, [STA 402-01](#).

How does the University determine whether an accommodation is "reasonable"?

Under §504, "otherwise qualified" means one who is able to meet all of a program's requirements in spite of his or her handicap. This test is applied by inquiring into accommodations that may be required, the effect of such accommodations, and their extent. "Section 504 imposes no requirement upon an educational institution to lower or to effect substantial modifications of standards to accommodate a handicapped person." However, it may be required to make 'reasonable' ones. An educational institution that declines to make an accommodation can still be found to have met its duty of seeking a reasonable accommodation where it can show that (a) the relevant officials within the institution considered alternative means, (b) the feasibility, cost and effect on the academic program, and (c) came to a rationally justifiable conclusion that the available alternatives would result either in lowering academic standards or requiring substantial program alteration. Program coordinators at the ASU Office of Disability Resources provide technical assistance to all referral sources, as requested.

How are the essential eligibility requirements for receipt of services or participation in programs or activities determined?

Academic requirements that are essential to the program of instruction being pursued by the student or to any directly related licensing requirement will not be regarded as discriminatory under §504 or the ADA. For example, the core course requirements for a specific degree program are essential while credits that are to be obtained through elective courses are not essential to the program of instruction and may be subject to modification. Standards that a college sets for admission into its academic program are entitled to deference as the correct statement of academic qualifications needed to perform at the college.

ASU must 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 or applicant with a disability. Students must make a timely request for accommodation in order to support a claim for violation of the ADA or §504. Students who request academic adjustments and then fail to go to class cannot then complain about the adequacy of the adjustments.

What is the process for identifying and implementing reasonable modification(s)?

Each case must be considered individually. Failure of a university or college to have appropriate policies in place to implement the protections of the ADA and §504 will be considered to be a violation by the Office of Civil Rights. Universities can establish reasonable standards and procedures for students to follow to obtain academic adjustments. ASU has adopted procedures which can be found at [STA 402](#). A student with a disability must exercise due diligence in seeking any requested academic adjustment. Conversely, delays in providing the requested accommodation can result in the university being found to have discriminated against the student. Students seeking accommodations must register with the Office of Disability Resources. Staff will prepare an accommodation plan for each student based upon the student's particular disability(ies) and program of study. Discussion should occur with the student to learn what accommodations have worked in the past.

Is the University required to make academic adjustments as reasonable accommodations to qualified students with disabilities?

Yes, in appropriate situations. The regulations under §504 list a number of academic adjustments and aids that may prove reasonable or necessary to accommodate students with disabilities. *34 CFR §104.44*. Some examples of academic adjustments appear below:

i. *Academic adjustments.* Academic adjustments must be provided as a reasonable accommodation and regardless of the student's ability to pay. Examples of academic adjustments include: (1) additional time, (2) adaption of course instruction, (3) course substitution, (4) taped texts, Braille, large print or electronic text, (5) modification of testing methods (e.g., extended time, unlimited time, oral test, frequency of tests, test location, alternate formats), (6) note-takers, (7) readers in libraries for students with visual impairments, (8) interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, (9) classroom equipment adapted for use by students with manual impairments, (10) preferential seating, (11) grade adjustments, (12) lighter course loads, (13) computer with spell check, and even (14) special parking arrangements. The University is *not* required to provide devices of a personal nature, readers for personal use or personal care attendants. *34 CFR §104.44*; see generally [STA 402](#).

ii. *Waiver of courses.* Where a course requirement is essential to the program of instruction taken by the student, a college is not required to waive the requirement. Some examples of course requirements which courts have found to be essential include nursing clinical requirements, math requirement for a BA degree, and foreign language requirements. Alternate arrangements may also amount to reasonable accommodation. For example, where a university

rejects a request to waive a mathematics course and provides tutoring, extended examination time, alternate test location, and other adjustments to the student, the university has acted lawfully. The appropriateness of waiver or modification of course requirements depends on the facts of each case. Substitution for nonessential requirements may be required. *See also* [STA 402-19](#).

iii. *Test taking.* Modifications to the manner of testing are recognized as reasonable accommodations. What is "reasonable" depends on the circumstances of each case. Several examples of modifications include a separate room, unlimited time, and a proctor. A university must provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual or speaking skills as will best ensure that the results of the evaluation represents that student's achievement in the course, rather than reflecting the student's impairment (except where such skills are the factors that the test purports to measure). 34 CFR § 104.44; *see also* [STA 402-06](#). However, a particular request for testing modification can be denied if the documentation provided by the student fails to support the particular modification requested, *e.g.* oral testing.

iv. *Tutors.* A college is obligated only to provide tutors in the same manner as it does to students without disabilities. For example, at ASU tutoring services are available to all students only for the lower level general studies courses. As a general rule then, ASU would not be required to provide to a student with disabilities tutoring for upper level courses because that service is not offered to non-disabled students. *See Northern Arizona University, 5 N.D.L.R. ¶284 (OCR 1994); see also* [STA 402](#). Other learning strategies can be offered, *e.g.*, test accommodations, use of the computer lab, services of a representative from Disability Resources to consult with the student's instructor(s). However, on a case-by-case basis, tutoring may prove to be necessary to achieve reasonable accommodation.

What are "auxiliary aids" and what role do they play in the university setting?

Auxiliary aids" may include interpreters or other effective methods of making orally delivered materials available to students with hearing impairments; readers in libraries, taped texts or other alternative print for students with visual impairments; adapted classroom equipment or lab aides for students with orthopedic impairments. 34 CFR §104.44. A university has the right to choose the accommodation that is effective and will assist the student. For example, a student may request a particular piece of expensive equipment but if other services and/or equipment can effectively assist the student, the university can reject the specific request of the student. In one case, a university was found to have properly rejected a request by student for a PC-based reader when it provided instead a reader and use of a tape recorder and the university also relaxed a classroom discussion requirement. At Arizona State University, the Office of Disability Resources oversees the identification of appropriate auxiliary aids for students with disabilities. *See generally,* [STA 402](#).

If the student does poorly in a class after receiving the requested adjustments, can the University grade the student accordingly?

Yes. For example, if a student has requested and is granted expanded time for taking a test

and submits incomplete or wrong answers, the instructor can grade the test according to the instructors standards for all students. Similarly, students who fail to meet the minimum academic standards of a program can be withdrawn from that program. For example, one university was found to have discriminated against a student with a learning disability when it failed to provide him with academic adjustments that he needed to participate in the student teaching program. The student had requested assistance with spelling and clear instructions from his master teachers. However, when the university ultimately did provide the requested adjustments and the student still received poor evaluations and failing grades, the university's decision to terminate the student from the program was upheld by OCR. In another case, a law school was found to have properly excluded a student with a speech impairment from moot trial court competition where the exclusion was not based on the student's impairment but rather on the fact that he received the lowest individual marks of all participants.

What constitutes a "learning disability" under the ADA and §504?

The ADA does not define specific learning disabilities. Nor does Section 504 attempt to expressly define specific learning disabilities. The implementing regulations suggest that the definition for specific learning disabilities contained in the *Individuals with Disabilities Education Act ("IDEA")*² should be followed. "Specific learning disability" is defined in the IDEA as "those [individuals] who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia."³ 20 U.S.C. §1401(a)(15). Attention Deficit Disorder (ADD) may or may not constitute a disability. A review of the medical documentation in each individual case is necessary.

What criteria is used to document the existence of a psychological/psychiatric impairment?

Students who seek accommodations from the University for a psychological or psychiatric impairment need to provide appropriate medical documentation to the Office of Disability Resources. Determining whether a psychological/psychiatric disorder, e.g. schizophrenia or borderline personality, is a covered disability is generally resolved by reference to the most recent edition of the American Psychiatric Association's Diagnostic and Statistical Manual (currently known as "DSM-IV"). A professional diagnosis must be made.

Examples of conditions that are not covered by either §504 or the ADA.

Court and administrative law decisions, in the employment context, have identified conditions that are not covered by either §504 or the ADA.

² The provisions of the IDEA apply to students between the ages of 3 to 21 who are attending pre-school, elementary and secondary schools. It does not apply to postsecondary educational institutions.

³ Excluded from the definition of specific learning disability are individuals who have learning problems which are primarily the result of visual, hearing or motor disabilities, or mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. 20 U.S.C. § 1401 (a)(15).

i. *Irresponsible behavior.* Poor judgment, irresponsible behavior and lack of impulse control are not the types of problems that are disabilities. (For an example, a teacher dismissed for kissing a student failed in his defense that poor sexual impulse control was a disability under the ADA).

ii. *Occasional stress and other temporary disabilities.* A distinction may be drawn between temporary and permanent disabilities. In many cases there is no need to accommodate where a condition is temporary, e.g. class specific stress. In order to qualify as a disability, a condition must "substantially limit" a major life activity. Extent, duration, and impact should be factored into each evaluation. *See* EEOC Technical Assistance Manual at II-5 (discussing temporary injuries under Title I of the ADA).

iii. *Sexual harassment.* A person who sexually harasses others is not "handicapped" under federal law.

What can the University do in cases where students engage in disruptive behavior?

Colleges and universities are not required to retain or readmit a student with a disability whose behavior poses a direct threat to the safety of others. A student code of conduct which prohibits disruptive or other inappropriate behaviors may be enforced. Several administrative law decisions addressing this issue have held:

If an individual's handicap cannot be accommodated in a way that assures a safe environment when he participates in a program, the program provider is justified in excluding him from participation;

student suspended because of observed behaviors and opinion of psychiatric professionals that student could not abide by student code of conduct, but school told her she could seek re-enrollment with appropriate medical documentation regarding emotional stability;

college's expulsion of student upheld as it was not based on perceived mental illness but rather on the student's actions of stalking and harassing a professor -- student posed a threat to the faculty and students; and

suspension decision was not based on traumatic brain injury disability but that student had threatened the professor after she told him he was ineligible to take the specific class as he had not taken a prerequisite course.

A fear of disruptive behavior may not be sufficient to deny readmission. For example, a college was found to have improperly denied readmission to a student after it had received medical documentation that the condition, bipolar disorder, had stabilized. However, a college may be able to set conditions for readmission.

Student Code of Conduct issues are handled by *Student Life* (480-965-6547) located in the

Student Services Building, Room B-228. If you believe that a student is engaging in misconduct or exhibiting behaviors that are disruptive to the classroom you should contact Student Life to discuss the situation and determine whether a code of conduct issue is involved.

What resources are available at Arizona State University for assisting students with disabilities?

The designated *ADA Coordinator* at Arizona State University is the Director of Equal Opportunity/Affirmative Action (480-965-5057). [ACD 401](#); 34 CFR §104.7. The ASU *Office of General Counsel* (480-965-4550) will also respond to inquiries. Before denying a request for accommodation(s), unit heads or higher level administrative officials must prepare a written explanation for review with the ADA Coordinator. Administrative officials must consult with the ADA Coordinator before requiring medical exams or taking other action related to ADA requirements.

The Disability Resource Center (DRC) at the Tempe campus serves students on the Tempe campus, Polytechnic campus, Downtown Phoenix campus, College of Extended Education (Mercado) and the School of Social Work Tucson component. The DRC is located at Matthews Center - First Floor (480-965-1234 (Voice) or (480-965-9000 (TTY)). DRC staff provide a broad range of support services, including, but not limited to, academic and career consultation; campus orientation; and assistance with registration, financial aid and housing. The following academic support services are provided, as appropriate, based on eligibility determination: taped texts, interpreters, real time captioners, C-Print operators, note takers, testing accommodations (proctors, scribes, readers, extended time), assistance with adapting course work materials, Braille production, and adaptive equipment. DRC, through a U.S. Department of Education TRIO Student Support Services grant, provides the Access Learning Laboratory, which helps a select group of "at risk" students develop individualized strategies for mathematics, writing, study skills and time management. The lab coordinates closely with other campus resources, such as the Writing Center, the Math Center and the Learning Resource Center (LRC). In addition, DRC houses the Hewlett Packard Adaptive Technology Center with many of the latest high technology devices for individuals with disabilities. An intra-campus cart transportation system (Mobility Services (480-965-3055) and an off-campus accessible van are available for academic and medical purposes. For DRS policies and procedures, please see [STA 402](#).

DRC at the West campus is located at the University Center Building, Room 130 [(602)543-8145 (voice) or (602) 543-4327 (TTY)]. For more information on services please consult the respective web sites:

[DRC at the Tempe campus](#)

[DRC at the ASU West campus](#)

[DRC at the Polytechnic campus](#)

Counseling and Consultation (C & C), located in the Student Services Building, Room B-317 (480-965-6146), provides confidential psychological counseling services to all ASU students. Individual therapy is offered on a short-term basis. Emergency counseling to help students in

emotional crisis is provided. C & C also offers counseling groups for career exploration, relationship difficulties, stress management, depression, assertiveness, eating disorders, family problems, and other common student issues.

Mental health emergencies also are handled by *Counseling and Consultation*. If the emergency happens after office hours (8:00 a.m. to 5:00 p.m.), then contact EMPACT Crisis Hotline (480-921-1006). See [STA 302-03](#).

What internal procedures exist at ASU for resolving disability-related disputes?

If a dispute results from either the denial of a requested accommodation or the sufficiency of the accommodation that has been offered or provided by the University and the matter cannot be resolved between the College and the student, the student may contact the ADA Coordinator (480-965-5057)(informal complaint) and/or file a written complaint (formal complaint) with that office within 120 days of the last act of alleged discrimination.

The Office of Equal Opportunity/Affirmative Action will conduct an investigation into the complaint of disability discrimination as described in [ACD 403](#). If the complainant is dissatisfied with the resolution from either an informal or formal complaint process, he or she may file a complaint with the Board on Equal Opportunity (BEO). The BEO will either accept the complaint for hearing or recommend that the complaint be declined for hearing. Where the BEO recommends declining the complaint for hearing, the President must review the recommendation and make the final decision. Where a complaint is accepted for hearing, the procedures set forth in [ACD 404](#) -- "Board on Equal Opportunity" will be followed. *34 CFR §104.7*.

Are there external procedures for resolving allegations of discrimination based on disability?

A student who believes that he or she has been discriminated against on the basis of disability may file a complaint with the Office of Civil Rights of the United States Department of Education within 180 days of the last act of alleged discrimination. Students are not required to use the University's internal process for resolving disputes related to disability.

A student may also file a private lawsuit in appropriate courts within certain time lines.

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