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

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**Introduction**

Are you interested in effective ways to bring awareness to instructors regarding how a student's ADA / Section 504 rights work and what should be considered in their particular classrooms to remove educational barriers? This guide will give disability resource professionals an organized, straightforward tool to use when engaging, educating, and resolving issues with faculty regarding academic disability-related accommodations. This analytical tool can be especially effective where the professional is seeking a better method to work with instructors, including resolving instructors' hesitations, resistance, or down-right denial of accommodations. Those working on college campuses that employ a high number of adjuncts may find this tool particularly helpful.

**Americans with Disabilities Act and Section 504 of the Rehabilitation Act**

Section 504 of the Rehabilitation Act (recipients of federal funding) and the Americans with Disabilities Act Title II (state and local governments) and III (business and nonprofits) prohibit discrimination on the basis of disability.

It is particularly worth noting that the ADA Amendments Act reads (emphasis ours):

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 or accommodation 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 or administrative burden

### **Shifting Away from Persuasion**

It is advisable to shift away from the approach where the disability services professional has the burden of “convincing” the particular academic department or instructor to provide the accommodation or modification. All parties should be aware that “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.”<sup>i</sup>

### **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 and Title II.”<sup>ii</sup> 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.”<sup>iii</sup>

(Section 504 of the Rehabilitation Act states prohibition of disability discrimination upon receipt of federal funding and ADA Title II is state and local government programs and services to the public nondiscrimination requirements.)

### **Effectively Framing Denial for Academic Departments**

Understanding that a denial of an academic adjustment/accommodation could mean a *denial of civil rights*, it is imperative that academic departments understand that this is a civil rights issue and that instructors must be fully prepared to justify decisions to the student, the US Department of Education Office of Civil Rights (OCR) and/or the student’s lawyer. The instructor must take the *active role* of denial rather than a passive one of simply disagreeing with the disability resources professional or the student, considering the guiding question: *Is the denial defensible?*

### **Guiding Questions for Assessing Accommodation & Accommodation Denial**

1. What are the instructor’s general **class policies and process** and how do they **affect equal access** determinations? Do these policies include how each individual disabled student’s access needs are determined and met?
2. Does the granted accommodation **directly correlate** with the student’s **disability or barrier**?

3. How has the college's accommodation(s) or modification(s) been **taken into consideration**? What is **the disability resource office recommending** and **why**?
4. What the **class is designed to do and measure** should be carefully examined. What knowledge is the professor or instructor teaching and what **activities are being used to determine or 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**?
6. Does the requested accommodation **fundamentally alter** the class requirement(s)? If so, be very detailed in describing how this is the case.
7. Does the request give the student an **unfair advantage** over other students? If so, exactly how? Please note that giving the student equal access to remove barriers does not provide an unfair advantage. The accommodation must **actually exceed equal access** by giving the student an unfair edge.
8. Would the accommodation result in **undue financial or administrative burden**? If so, be very specific in describing how.  
Please note that 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.
9. What other equally **effective accommodation 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?

### **Essential Requirements**

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

## **Class Substitution**

A class substitution or waiver should be taken into *serious consideration*, barring fundamental alteration, if no academic accommodation can be given.

## **Future Requirements**

A denial of an accommodation *cannot* be justified based on the professor's or 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 must be based on the *present* class or program requirement(s) only.

## **Denial of Accommodation**

If the student believes in the end that the college is making an unjust decision of a denial, then the disability resource professional has the role of informing the student of their right of appeal and/or to file with OCR. To prevent irreparable harm, the college should have a *procedure in place* where the disability resource office 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.

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<sup>i</sup> US Department of Education Letter of Mt. San Antonio College Voluntary Resolution

<sup>ii</sup> US Department of Education Letter of Mt. San Antonio College Voluntary Resolution

<sup>iii</sup> Wynne v. Tufts Univ. Sch. of Med., 932 F.2d 19, 25-26 (1st Cir. 1991)

**For additional information and questions, contact your Regional ADA Center at 1-800-949-4232 (voice/TTY)**



## **A Program of ILRU at TIRR Memorial Hermann**

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