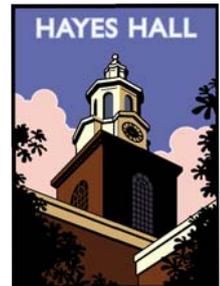
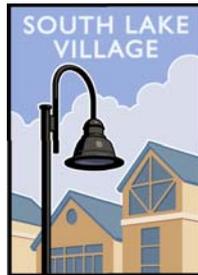
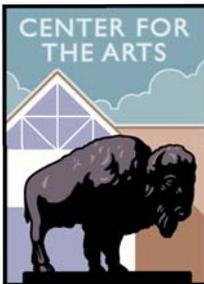
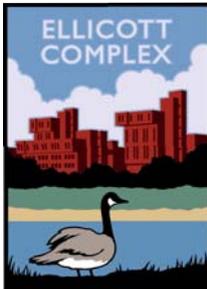


Rights and Responsibilities For Disability Access to Academic Programs

A Guide for UB Faculty and Staff



Introduction

Two federal laws ensure equality of opportunity for qualified students with disabilities in academic programs of postsecondary education:

1. Section 504 of the Rehabilitation Act of 1973 requires that federal funds recipients not discriminate against qualified individuals with disabilities on the basis of disability.
2. Title II of the Americans with Disabilities Act (ADA) of 1990 requires nondiscrimination in all programs, services, and activities of state and local government for qualified individuals with disabilities.

UB is both a federal funds recipient and an entity of state government. Section 504 and the ADA protect both American citizens and internationals with disabilities studying at UB. Additionally, the New York Human Rights Act requires nondiscrimination against individuals with disabilities and defines disability more liberally than do federal statutes.

Additional information can be found at such sites as:

<http://www.disabilityinfo.gov>

<http://www.state.nv.us>

<http://ahead.org>

What is a disability?

A disability is a mental or physical impairment that substantially limits one or more major life activities of the individual in question.

What are major life activities?

Major life activities are basic activities the average person can perform with little or no difficulty, such as walking, breathing, seeing, hearing, performing manual tasks, caring for one's self, learning, and working. This list is illustrative, not exhaustive.

What are substantial limitations?

Federal courts and regulatory authorities have broadly adopted the definition of substantial limitations originally codified by the Equal Employment Opportunity Commission (EEOC): a mental or physical impairment that poses significant restrictions on the conditions, manner, or duration under which the major life activity can be performed by the individual in question. The Supreme Court has clarified that "significantly restricted" means that life activities must be limited to a considerable extent by the impairment, after mitigating measures, for that individual to be protected by the above federal statutes.

What is an individual with a disability?

An individual with a disability is:

1. someone who has a disability
2. someone who has a record of a disability, or
3. someone who is regarded as having a disability or who has a relationship with an individual with a disability.

Those in category #1 are entitled to reasonable accommodations to ensure equality of opportunity. Those in categories #2 and #3 have the right to freedom from discrimination on the basis of disability only.

Regulatory Principles (cont.)

What is a qualified student with a disability?

A qualified student with a disability is a student or applicant with a disability who meets the academic and technical standards required for admission or participation in the educational program or activity in question.

What is a reasonable accommodation?

The specific definition pertains to employment regulations for individuals with disabilities and is not covered in this document. Generically, although the term is broadly used, it appears nowhere in federal law or regulations concerning disability rights in any but the employment context. Regardless, regulatory authorities and federal courts have relied on the concept of reasonable accommodation to indicate that individuals with disabilities are entitled to reasonable modifications of policies, practices, and procedures, as well as various services necessary to ensure nondiscrimination on the basis of disability. The word "reasonable" refers more to the nature of the accommodation request and to a reasoned and deliberative response than to the extent of the university's obligation to accommodate the student's disability. Section 504 regulations use a more technical term: "academic adjustment." "Reasonable accommodation" as used in this document mainly addresses academic adjustments.

What are academic adjustments?

Section 504 regulations specify academic adjustments as:

- academic requirements
- academic rules
- course examinations, and
- auxiliary aids and services.

Academic adjustments may include:

- extending the length of time for completing academic programs
- substituting specific coursework as a requisite for completing degree requirements, or
- adapting the way specific courses are conducted.

Academic rules may not be imposed such as prohibiting the use of service animals or tape recorders in classrooms for purposes of accessing learning activities. Alternative classroom testing procedures are required for students with sensory, manual, or speaking skills (including learning disabilities), to ensure that the student's achievement is being measured rather than the student's sensory, manual, or speaking skills, unless the test purports to measure those skills. Auxiliary aids and services include equipment and personal services so that students with disabilities can access oral and print materials.

When is an accommodation request unreasonable?

Reasonable accommodations are intended to allow students with disabilities an equal educational opportunity. Students who cannot meet essential program requirements and achievement standards, with or without reasonable accommodations, are not considered qualified individuals with disabilities and in that limited regard are not protected from discrimination on the basis of disability. In other words, standards do not have to be lowered or essential requirements waived to allow students with disabilities to participate. An accommodation request is unreasonable if it would:

- fundamentally alter the nature or purpose of the program
- fail to prepare the student for licensure
- create undue financial or administrative burdens on the university, or
- pose a direct threat to the health and safety of others or to the student making the request.

Finally, the university is not required to provide attendant-care aides, aids for personal study, or equipment of a personal nature.

Procedures

How is it determined that UB students have disabilities that necessitate reasonable accommodations?

It is a multistep process that begins by establishing that the student is an individual with a disability. In the case of physical disabilities where functional limitations are obvious and the accommodation request is consistent with those limitations, the disability-review usually is perfunctory. As functional limitations become less obvious and as the accommodation request becomes more considerable, the review is more involved. A student must present to UB's Office of Disability Services (ODS) clear, comprehensive, current, and authoritative documentation of the nature of the impairment and the ways and extent to which the impairment imposes limitations on the student's major life activities. The documentation must be prepared on the letterhead of a medical or psychological service provider who is qualified to assess and diagnose the disability in question.

UB's Director of Disability Services reviews the documentation to recognize that the student has a disability as defined by federal regulations. The student's request is reviewed for fit with her or his known limitations. Also considered is information from educational records and/or student interviews about what accommodations have worked in the past. If additional information is needed, reasonable accommodations are initiated while review continues. Assuming the student's accommodation request has been determined reasonable, services are either begun by ODS, or the student is referred to university faculty and staff for next steps.

How are course instructors notified?

ODS prepares an individualized accommodation memo to instructors indicating that the student has been recognized as having a disability or remains in a period of review while additional documentation is acquired. The memo recommends specific accommodations and guides the implementation of those accommodations. Students are required to deliver the accommodation memo personally to instructors of courses where reasonable accommodations will be requested. Students are further required to meet with instructors to discuss the accommodation memo in detail and arrange procedures for implementing the reasonable accommodation.

Why do so many accommodation memos look alike?

Accommodation memos help define modifications to learning activities, assignments, and test administration to level the playing field for the disabled student. Procedures for certain accommodations may vary little, but specific recommendations in the first paragraph of each accommodation memo (in italics) are individualized for each student and are carefully crafted for compliance purposes.

Expectations

What do students with disabilities have the right to expect of instructors?

Students have the right to expect course instructors to:

- read the accommodation memo
- meet to discuss implementing accommodations
- consider the student's clarifying requests

The student has the right to expect that the director's recommendations will be honored unless there is a compelling academic reason not to do so. In that case, the student has the right to expect that the instructor will address this with the director of disability services and possibly with the appropriate academic department prior to refusing the recommendation. The student has the right to expect that the recommended accommodations will not be arbitrarily refused and that the course instructor will initiate an informed dialog with appropriate campus officials before denying an accommodation request. Finally, the student has the right to expect that the instructor will cooperate throughout the semester with agreed-upon procedures.

What do instructors have the right to expect of students?

Instructors have the right to expect students to meet with them, deliver the accommodation memo, and follow procedures for implementing reasonable accommodations. Most important, instructors have the right to expect students to learn course materials, master required skills, and achieve according to required standards. Reasonable accommodations are not intended to allow the student undue advantage or to fall unduly behind course requirements. Finally, instructors are not required to make reasonable accommodations that were not requested or were requested with late notice.

Can instructors require students with disabilities to attend class if other students are so required?

Yes, but with some restrictions. A class-attendance rule should be modified, if recommended by the accommodation memo, when attendance is not academically essential to meet course requirements. However, federal regulators have indicated that instructors have the right to determine that class attendance is essential because:

- class activities include interaction between students and instructor or among students
- student contributions constitute a significant component of the learning process
- the fundamental nature of the course relies upon student participation as an essential method for learning
- the student's failure to attend class constitutes a significant educational loss to other students, or
- class participation is considered in the assignment of the course grade.

Can instructors require that homework and research assignments be submitted by published due dates?

Yes, however, when a disability factors into delayed completion, reasonable extensions may be required. This is not intended to excuse students for falling significantly behind the class. Nor are students permitted to submit work so late as to create an undue administrative burden on the instructor. Further, the longer the class is given to complete assignments, the less need for such an extension. Finally, if disability factors necessitate a delay in taking a test, this may require a makeup test. Again, however, when the student knows that the disability is subject to acute exacerbations that would delay academic activities, the student is responsible for documenting such a likelihood for review by the director. Because some courses are less amenable to delays than others, such accommodation requests may, unfortunately, be denied - in effect making the student unqualified to complete the course.

Expectations (cont.)

Are students with disabilities entitled to reasonable accommodations for field study in professional schools?

Yes. In fact, no example better illustrates the student's responsibility to make timely, well-documented requests for reasonable accommodations. Each field placement presents unique circumstances that call for advance planning and coordination to effect reasonable accommodations. In these circumstances especially, the student, faculty and ODS must communicate effectively and prepare carefully to minimize the likelihood of assignments that impose barriers that cannot be reasonably accommodated.

Is disability information private and confidential?

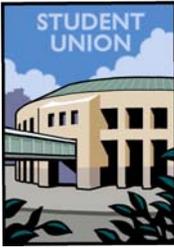
Yes. Students with disabilities are entitled to privacy of the medical and psychological records they submit to ODS. However, the Family Educational Rights and Privacy Act (FERPA) permits the director of disability services to impart to university officials (including course instructors) information about the student's disability that those officials have a legitimate educational interest in knowing. Such information would generally be limited to information about the student's disability-imposed functional limitations that are relevant to recommendations for academic adjustments or to pedagogical consideration.

How are compliance responsibilities shared at UB?

University compliance with federal and state laws is monitored under the auspices of the Equity, Diversity, and Affirmative Action Administration, 402 Capen Hall, 716-645-2266. Disability services and accommodations are coordinated by the Office of Disability Services, 25 Capen Hall, 716-645-2608 (voice), 716-645-3116 (TTY).

UB's Office of Disability Services
welcomes questions and comments
from the faculty and staff

Please contact Randy Borst, Director
of Disability Services, to raise
questions or suggest improvements
for future updates of this guide.



Disability Services

25 Capen Hall

645-2608

645-2616 (TTY)

stu-disability@acsu.buffalo.edu

<http://www.ub-disability.buffalo.edu>

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Student Affairs

Helping Students Succeed at UB

Jan. 2004