

Students' Responsibilities under the ADA and the Grievance Process

Week 11 Power Point

Students' obligations and responsibilities

- Voluntarily disclosure of any disability that could impact student's education to the university disability service office (DSO).
- Voluntarily identify disability-related needs to the DSO.
- Provide diagnostic information to the DSO. Universities have no legal obligation to provide diagnostic testing or documentation for any disabilities.
- Formally request needed accommodations and services in a timely manner.
- Be qualified: Attend class and maintain the academic standards set by the college and department. Abide by all policies and procedures established for all students. Meet the behavioral expectations set for all program participants.

Reference: Heyward, Salome (2009) Disability and Higher Education, LRP Publications (Supplement 2)

Students' obligations and responsibilities

- Be qualified: The protection provided by the law is to ensure that persons with disabilities have the same opportunities as all other students have to compete and participate.
- Students with disabilities must demonstrate qualification and meet all essential academic standards required of all students. Failure to meet the standards due to disability is still a failure.
- Fully participate in the accommodations process. Exercise due diligence to make the process work.
- Advise DSO staff if there are problems with the services provided or within the classroom setting.

Students' obligations and responsibilities

- Consistently use the accommodations that are provided.
- Work cooperatively with DSO staff and faculty and comply with reasonable requests. (For example, DSO may require a two day notice for testing accommodations).
- Advise DSO staff in a timely manner if there are problems with the services provided or within the classroom setting. (For example, if the faculty member is refusing an accommodation, waiting until after a grade is posted for the semester would not be timely.)
- Students are expected to exercise due diligence to make the process work. This includes providing notice of their disability related needs, participating in meetings with DSO staff and others, advising DSO staff of problems, and consistently using the accommodations that are provided.

Common misconceptions of students and parents

- Many misconceptions relate to the differences between IDEA (the disability law that governs education through high school) and the laws governing higher education.
- IDEA requires schools to reach out and be proactive in identifying students with disabilities and providing services to them. In higher education, under the ADA, it is the responsibility of the student to self identify and provide documentation, and cooperate in the accommodations process.
- Other misconceptions:
- Students may believe student's preference will determine accommodations

Common misconceptions of students and parents

- Other misconceptions:
 - Students may believe student's preference will determine accommodations. If a student with a disability requests an accommodation, it must be provided. (Example: students may request exams to be in a specific format. There is generally no requirement for the university to comply with this request.)
 - If a disability interferes with requirements such as attendance or conduct, the failure to meet the requirements should be excused.
 - The university assumes full responsibility for the success of the accommodations process.
 - Universities must provide services even if a student fails to participate in the accommodations process with DSO staff.

Other notes regarding the responsibilities between students and universities.

- Educational institutions are not required to lower academic standards or fundamentally alter programs or services.
- Students with disabilities must meet essential standards required to remain qualified even if the failure to meet them is due to disability.
- Safety concerns: A student may be prohibited from continuing in a program if the student's conduct endangers the health and safety of that individual or others or the behavior interferes with other's opportunities to participate in the program.
- Institutions may discipline students for misconduct **even if the misconduct relates to the student's disability**. (This is also different in higher education).

Other notes regarding the responsibilities between students and universities.

- In clinical settings, College's have broad discretion to prohibit a student from participating in a program if the student's conduct has the "reasonably foreseeable potential" to harm clients in clinical, medical, educational, counseling, or other similar programs.
- Behavior in an academic setting that causes a reasonable concern about the student's future behavior in a clinical setting is sufficient to allow a university to prohibit student participation.
- Attendance: Universities have the right to establish and enforce appropriate and necessary attendance policies for programs and activities.

Other notes regarding the responsibilities between students and universities.

- The Rehabilitation Act and ADA require only reasonable accommodations, not necessarily the accommodations an individual would prefer.
- Students are not entitled to demand that institutions create programs not available to other students or convert courses to whatever format they desire as accommodations.
- Universities may choose the type of academic adjustments and auxiliary aids and services to provide so long as they are “equally effective”.
- In the post secondary setting universities are entitled to more deference than elementary and secondary schools generally are; they have more latitude to establish standards and, if they follow an adequate determination process, their choices will likely be respected. “Courts are ill equipped...to determine whether a student meets a university’s reasonable standards for academic and professional achievement.” Hogan v. Ogden (ED PA 2008)

Other notes regarding the responsibilities between students and universities.

- When students seek to challenge institutional decisions regarding program requirements the only way to overcome that deference is to provide evidence of bias, bad faith, discriminatory intent, or establish that the institution does not have proper accommodations policies and procedures in place and students are being denied meaningful access.
- In most cases when students reject accommodations or refuse to cooperate with DSO staff, OCR finds that it is the student's refusal that creates the access problem and the university is not responsible.

ADA Grievance Process

- "No otherwise qualified person with a disability in the United States...shall, solely by reason of...disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity sponsored by a public entity."
- *In addition to the non-discrimination requirement, public entities must adopt and publish a student grievance procedure, which is an internal course of action that provides for timely and equitable resolution of complaints alleging a violation of U.S. Department of Justice regulations related to the implementation of Title II of the Americans with Disabilities Act (1990) or Section 504 of the Rehabilitation Act (1973).*

ADA Grievance Process

- Grievance and appeal procedures differ from school to school but all include some important due process components.
- The grievance/appeal process is generally owned and enforced by a school's disabled student services program, ADA or Section 504 coordinator, or dean of student affairs.
- Students do not have to file an internal grievance with your school to be able to file a complaint with the DOJ or the OCR, but the DOJ or OCR investigator assigned to the case may ask them to do so before she or he reviews the complaint.

Example of grievance process

Disability Grievance Procedure (Purdue University, 2014)

- The Disability Resource Center (DRC) has the responsibility of determining a student's need for accommodation. This determination is made through a two-part process of an intake interview and reviewing documentation of the disability. If the DRC staff determine a student is eligible for accommodations, the DRC is responsible for coordinating the accommodations with the student and the instructor and third party service providers.

Grievance Process (continued)

- If the student was denied accommodations, believes the final accommodation(s) provided are not reasonable, or the accommodations were not provided as agreed to, or if the student believes for any other reason that he or she has been subjected to unlawful discrimination or violation of rights with respect to the granting or implementation of their request for accommodations under the ADA and Section 504 of the Rehabilitation Act, the student should follow the procedure below.
- During the grievance process, any academic accommodations or services that have been put into place will continue uninterrupted. DRC recognizes that it is important to address the student's concerns promptly. The goal of all University personnel should be to accomplish each step of this grievance process as quickly as possible.

Disability Grievance Procedure (Purdue University, 2014)

Grievance Process (continued)

****Key due process components highlighted.**

Informal Grievance Procedure: The student may first make an appointment to meet with the Director of the Disability Resource Center. At this stage (the “Informal Grievance Process”), the Director will review the matter, **allowing all interested parties an opportunity to submit relevant information**, statements and documentation. The Director will make a decision regarding the informal grievance **within seven (7) working days of the meeting with the student and attempt to notify the student immediately**. The Director’s decision will be in writing and may be sent to the student by either U.S. Mail or by electronic mail. If the student’s dispute involves a decision of the DRC Director, the student may forego the Informal Grievance Process and file a Formal Grievance (as defined below).

Disability Grievance Procedure (Purdue University, 2014)

Grievance Process (continued)

- **Formal Grievance Procedure**

- If the student is not satisfied with the result of the Informal Grievance Process with the DRC Director, or if the student's dispute involves a decision of the Director, the student may initiate a formal grievance (the "Formal Grievance") by requesting and filing a formal Disability Grievance form. The grievance form may be obtained from DRC or online. The form should be completed and submitted to the Director of Student Success within 21 working days of the date of the DRC Director's decision regarding the Informal Grievance Process or 30 working days of the disputed incident, whichever date is later.

Disability Grievance Procedure (Purdue University, 2014)

Grievance Process (continued)

- After the Director of Student Success receives the grievance form, s/he or his/her designee from Student Success will **conduct a formal investigation of the student's Formal Grievance**. This review will involve **meeting with the student**, and may also involve meeting with DRC staff, faculty members, and/or other concerned staff members. The **student has a right to present information in person** to the Director of Student Success or designee. A **written decision** will be issued by the Director within 30 working days of receipt of the grievance form.

Disability Grievance Procedure (Purdue University, 2014)

Grievance Process (continued)

- Alternatively, the Director has the sole discretion to convene a Grievance Committee comprised of three professional staff or faculty members who will hear the Formal Grievance and recommend a course of action. The final written decision will be issued by the Director within 30 working days of receipt of the grievance form.
- The student **may request a review of the final written decision of the Director of Student Success by the University's ADA Coordinator** in the Office for Institutional Equity within 10 working days of the student's receipt of the Director's final written decision. The Coordinator will file a written decision within 10 working days of the request to review. The decision of the ADA Coordinator is final.

Disability Grievance Procedure (Purdue University, 2014)

OCR COMPLAINT PROCESSING PROCEDURES

OCR evaluates each complaint that it receives in order to determine whether it can investigate the complaint.

- OCR enforces the following laws:
- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- Age Discrimination Act of 1975, which prohibits discrimination on the basis of age;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability;
- Boy Scouts of America Equal Access Act.

<http://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

OCR COMPLAINT PROCESSING PROCEDURES

- Steps in the OCR Process:
- EVALUATION OF THE COMPLAINT
- OPENING THE COMPLAINT FOR INVESTIGATION
- INVESTIGATION OF THE COMPLAINT
- RESOLUTION OF THE COMPLAINT AFTER A DETERMINATION OF NONCOMPLIANCE
- APPEAL OF OCR'S DETERMINATIONS
- POTENTIAL COURT PROCEEDINGS

<http://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

Some questions about the grievance process:

- **Do I have to file a grievance with my school before I can file a complaint with the U.S. Department of Justice (DOJ) or with the Office for Civil Rights of the U.S. Department of Education (OCR)?**
- No. You do not have to file an internal grievance with your school to be able to file a complaint with the DOJ or the OCR, but it may be helpful to do so. If you have not filed an internal grievance with your school, the DOJ or OCR investigator assigned to your case may ask you to do so before she or he reviews your complaint.

<http://www.disabilityrightsca.org/pubs/530901.pdf>

Questions:

- When and how do I file a complaint with the Office for Civil Rights of the U.S. Department of Education (OCR)?
- OCR investigates violations of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973 (See Question No. 1 for the definitions of Title II and Section 504.). To file a complaint with OCR, use OCR's online complaint form at:

<http://www.ed.gov/about/offices/list/ocr/complaintintro.html>

<http://www.disabilityrightsca.org/pubs/530901.pdf>

Questions:

- When and how do I file a complaint with the Department of Justice (DOJ)?
- The Department of Justice is the federal agency that enforces Title III of the ADA. (See Question No. 1 for the definition of Title III.) If your school is covered by Title III and you want to file a discrimination complaint, you can find complete instructions here: <http://www.ada.gov/t3compfm.htm>, or write to:
- U.S. Department of Justice
950 Pennsylvania Avenue, NW Civil Rights Division
Disability Rights Section- NYAVE Washington, D.C. 20530
- Complaints with DOJ can be filed at any time, although you should file your complaint as soon as possible. Although there is no timeline on filing Title III complaints with DOJ, there are timelines on lawsuits filed under Title III.²²

<http://www.disabilityrightsca.org/pubs/530901.pdf>