

NEW ADA and FERPA Guidelines For Students with Disabilities

Researched and Prepared by:

This is a research report prepared for faculty and staff and handed out at a presentation on this topic.

**Holly Genser, Director
Learning Resource Center
11/23/09**

Contents

General Information on the Americans with Disabilities Act.....	3
Who is Eligible for Accommodations? New ADA Regulations, January 1, 2009	3
FERPA for Students with Disabilities.....	4
Considerations about Faculty Involvement and Judicial Risk	4
References	6

NEW ADA and FERPA Guidelines

For Students with Disabilities

Prepared by Holly Genser, Director
Learning Resource Center
11/23/09

General Information on the ADA

- Under the ADA, only students who request accommodations receive them because they are considered adults, not children.
- ADA gives college students the right to “equal access” or opportunities to participate in programs and services in which they could not otherwise participate or fully participate without accommodations.
- We need not provide modifications to the curriculum that fundamentally alter the nature and standards of the program or class.

Who is Eligible for Accommodations?

New ADA Regulations, January 1, 2009

From a webinar presented by Sharon Rennert, Senior Attorney Advisor, U.S. Equal Employment Opportunity Commission and Linda Carter Batiste, Principal Consultant/Disability Law Specialist, Job Accommodations Network.

- Purpose to redefine disability because the Courts kept narrowing how severe disability and the amount of proof required. People with many conditions were told not covered, such as epilepsy, cancer, Muscular Dystrophy, Bipolar Disorder, and insulin-dependent people.
- Now the ADA specifically covers anyone with an impairment, or who is regarded as having an impairment, in one or more major life activities. Examples are: walking, standing, sitting, hearing, sleeping, seeing, etc.
- It provides a new category of impairment: **major bodily functions**. Examples are: neurological, brain, respiratory, circulatory, endocrine, normal cell growth (cancer), reproductive, digestive, hematic, lymphatic, and musculoskeletal problems.
- It says to disregard mitigating measures—Congress says to assess whether person substantially limited if stop using measure. Examples include medication, prosthetics, hearing aids, oxygen, medical equipment, insulin for diabetes, and anti-seizure meds. If a person is substantially limited without one of these measures, then reasonable accommodations are still required as needed.
- Ordinary glasses or contact lenses are exceptions to the mitigating measures rule.
- Temporary, non-chronic conditions, like broken limb, minor gastrointestinal flu, common cold, everyday headaches, are also still excluded. (Rennert and Batiste, 2009)

FERPA for Students with Disabilities

Information on FERPA is from ED.Gov, FERPA Online and a telephone interview with Office of Civil Rights Senior Attorney Roger Mills.

- Students must give prior written consent before their records are revealed, but there is an exception—we may show records to any school official with an educational interest. (Booker, 2004)
- We obtain this consent; therefore we can share information with any school official who needs to know in order to arrange accommodations. (If we did not obtain consent, we would have to disclose this policy in the University’s annual FERPA notification.) (Booker, 2004)
- “A school official is a person employed by the University in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff); a person or company with whom the University has contracted (such as an attorney, auditor, or collection agent); a person serving on the Board of Trustees; or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks.” (Booker, 2004)
- It is part of the job of the disability services provider on campus to make sure that the student’s disability documentation is applied appropriately. (Booker, 2004)
- Faculty members **may** have access to records; a university may deny faculty access to records and only provide accommodations needed. (Booker, 2004)
- The student decides when and to whom to release records and diagnosis, with the exceptions under FERPA for financial aid applications, and danger to self or others. (Mills, 2009)
- There are types of disabilities that students do not, and probably should not, disclose, such as mental health disabilities and in cases where the faculty member is not sympathetic.
- Students may not disclose their disabilities at all if they think it will harm them, so the student must be the determiner of who tell and what to tell besides what the accommodations are. [emphasis mine] (Mills, 2009)
- Based on the above, even if a student does not wish to disclose the diagnosis of the disability, he or she is still entitled to accommodations. We cannot force a student to approve disclosing if he/she does not wish to. (Though we can disclose to each other information about a student who may present a danger to himself and others without the student’s consent)

Considerations about Faculty Involvement and Judicial Risk

Disability Services Consultant Jane Jarrow presents various scenarios about how faculty and university can be sued being too lenient in providing services and “helping” students without the Disability Services Office.

- University and Disability Services rules were established to protect individual faculty members, the university, and the student

- Faculty members who provide accommodations without receiving notice from Disability Services put themselves and the university at risk for discrimination lawsuits. Examples of situations in which the professor and/or the university may be sued are:
 - The student may expect other faculty members to do the same
 - The faculty member may not meet all the student's needs for accommodations
 - The faculty member may be more comfortable with one type of disability and accommodate it for students who have it, but send other students to the disability services office
 - Different professors follow different policies, so the student expects to be accommodated directly, then another says he/she must go through Disability Services.
 - If a student has no record of accommodations provided at this university, then when he/she seeks graduate school or employment accommodations, there will be no record to send. (Jarrow, 1997)
- Ensuring that the student registers with Disability Services (Holly Genser) and you receive information about the student's needs ensures that you and the university will avoid these risks and that the student receives the proper accommodations.
- If you have questions or concerns about accommodations, you should discuss them with Holly immediately. Together, we can arrange many alternative ways of serving our students.

References

- Booker, L. S. (2004, 11 2). *FERPA Online Library*. Retrieved September 8, 2009, from ED.Gov, U.S. Department of Education, Policy Guidelines:
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/copeuna.html>
- Jarrow, J. E. (1997 , February). *DAIS Newsletter (Volume 1, No. 2)*. Retrieved 9 09, 2009, from DAIS Disability Access Information and Support: www.daisweb.com/node/52
- LeRoy S. Booker, D. F. (2004, 11 2). *FERPA Online Library*. Retrieved September 8, 2009, from ED.Gov, U.S. Department of Education, Policy Guidelines:
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/copeuna.html>
- Mills, R. (2009, 09 09). Senior Attorney, Office of Civil Rights, (404) 562-6362. (H. Genser, Interviewer)
- Rennert, S. and Batiste, L. (2009, July). *ADA Tricky Issues*. EEOC and JAN Job Accommodations Network:webinar archived at <http://breeze.jan.wvu.edu/p83419231/>