

## Americans with Disabilities Act: What Academic and Fieldwork Sites Need to Know

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Top issues nationally from an OT Perspective

1. Not Following University Procedures
  - o Including Faculty determining Reasonable Accommodation instead of ADA Office/Disability Services
  - o Triggers do over that may or may not have been best for profession
2. Student Discloses After the Fact
3. Reasonable Accommodations **not** Carried Over to Fieldwork
4. Refusal to Provide Accommodations
5. Employer essential functions and technical standards are applied instead of academic standards
6. Students with disabilities not treated the same in process
  - o Requiring disclose before agreeing to place at a field work site

**Universal Design for Learning (UDL):** a set of principles for curriculum development that give all individuals equal opportunities to learn.

UDL provides a blueprint for creating instructional goals, methods, materials, and assessments that work for everyone--not a single, one-size-fits-all solution but rather flexible approaches that can be customized and adjusted for individual needs.

Accessed 3/1/2016; ¶1-2 <http://www.udlcenter.org/>

Common Examples of Universal Design

Ramps  
Handrails  
Contrasting colors to distinguish where walls are located.  
Automatic doors  
Bathroom doors in client rooms swing in both directions  
Computers/laptops, IPADS, smart phones  
Electronic records  
Wider hallways and doorways

### Barriers to learning

- Physical Inaccessibility
- Accommodation Process
- Lack of Individualization
- Non-compliant Website

- Lack of accessible electronic information
- Ineffective Dispute Resolution Mechanisms
- Negative Attitudes and Stereotypes
- Inappropriate Use of Direct Threat Defense

### **Changing Demographics**

Increased incidence of disability in society

- Medical advances
- New diagnosis
- Aging factors

Increased # of students with disabilities entering college (2yr and 4yr and Beyond)

- Increased awareness of rights (federal/state)
- Increased services in K-12 system preparing students to pursue further education
- Baby Boomer generation are strong advocates for their children and demanding access to programs and services
- Lack of specialized services/programs in the community (work, independent living, etc.) so individuals looking for other options

### **Civil Rights Laws**

#### **Section 504 –**

- Applies to entities that are recipients of federal funds (grants, federal student loans, etc.)
  - Applies to all programs and services operated by that entity
- Effective since 1978
- Enforced by Agencies that distribute federal funds (i.e. Department of Education, etc.)
- Prohibits discrimination on the basis of disability

#### **Americans with Disabilities Act: Applies to:**

- Private and Public Employers
  - 15 or more (Private) or 1 or more (public) employees
- Public entities (local and state governments)
- Educational Institutions
  - Private entities that operate places of public accommodation
  - Educational Institutions
  - Exception: Religiously controlled and operated
- Prohibits discrimination on the basis of disability
- Requires all programs and services to be readily accessible to and useable by people with disabilities
- Non-discriminatory admission/selection criteria
- Provision of Reasonable Accommodation
- Modification of Policy and Procedure
- Provision of auxiliary aids and services to ensure effective communication

## Who is a Person with A Disability?

### ADA Amendments Act of 2008

Individuals with physical or mental impairments that substantially limit one or more major life activities

Less emphasis on “severity”

Episodic Conditions covered

Individuals who have a record of such an impairment

Recovered Alcoholics, Drug Addicts, Cancer Survivors, etc.

Individuals who are “regarded” as having such an impairment

Persons with or without disabilities who are denied an opportunity or treated in a manner that “regards” them as being “unable” or “substantially limited” in their ability to perform a task or activity without direct evidence that this would be the case

Does not apply to conditions that may be transient and/or minor (broken bones, flu/cold, etc.)

Impairment can be substantially limiting even if episodic or in remission

What constitutes a “major life activity” is extensive and includes bodily functions

Limitations do not have to be long term or chronic to be covered under the ADA anymore

Could be a short term impairment as long as the limitation was “significant”

Remember: Goal of all of these changes is to broaden definition and make it much easier/quicker to find disability without a demanding analysis

**Qualified individual with a disability:** Individual who has the requisite skills and abilities to perform the essential functions of the job/position/role they hold with or without a reasonable accommodation

### **Accommodation:**

Modification or Adjustment to the way things are usually done.

Changes to the environment to enable someone with a disability to have equal access.

Use of assistive and/or accessible technology to enable someone to accomplish a task.

### **What is a “Reasonable” Accommodation**

Anything can be an accommodation.....the sky is the limit

Whether or not it is “reasonable” is determined by the entity in light of the accommodations impact on:

Financial resources

Undue financial hardship to the entity

Other aspects of operations and functions

Is it a “fundamental alteration” of the program or service?

**“Reasonableness” is determined by the entity**  
**Sound process in place to evaluate “reasonableness”**  
**Ability to defend the decision if needed**

### **Forms of Reasonable Accommodation**

#### **Modified Schedules**

Allowing part-time versus full time  
Allowing flexibility in the schedule  
Allowing for “breaks” in the schedule (take a semester off, etc.)

#### **Auxiliary Aids and Services**

Sign Language Interpreter  
Real Time Captioning  
Assistive Listening System

#### **Modification in Policy or Procedure**

Allowing a service animal into the classroom/clinic  
Allowing alternative clothing  
Use of scent free products/Latex free supplies  
Allowing food/liquids to be carried with the person in the classroom/clinic setting

#### **Materials in Alternative Formats**

Large Print/Braille documents  
Electronic versus paper documents  
Audio taped information

#### **Modified Procedures/Requirements**

Take home exam versus in-class exam  
Oral exam versus written  
Use of calculator during exams  
More time to complete assignments/projects  
Additional time on an exam  
Exemption from course requirements  
Substitute other requirements: Unless creates a fundamental alteration

#### **Assistive Technology**

Computer/tablet to take notes, store information  
Tape recorder  
Timers or other technology to manage “time”  
Specialized equipment for specific limitations  
Screen reader software  
Text to Speech software  
Digital or amplified stethoscope  
Note taker  
Magnifiers  
Digital and audible bar code reader  
“Apps” on Smartphone's

## Accommodations are very individualized and case by case

- Individual circumstances may require further negotiation and discussion. There are no “cookie cutter” approaches to accommodations

Not all accommodations will be the same for the same limitation/disability

- Disability manifests itself differently in different people and individuals have their own coping mechanisms and responses to the limitations that they may experience
- Some conditions can be episodic in nature and require different response at different times
- Not all accommodation requests will be “reasonable” but every attempt should be made to address the limitation and provide the eligible student with an equal opportunity
- Alternatives to the requested accommodation may be explored as long as the accommodation provided is effective
- Some accommodations may require additional time, effort and planning to implement.
- Some accommodations may be unreasonable given timeframes, circumstances, cost, etc. Alternatives should still be explored

## What is NOT a “Reasonable Accommodation?”

Fundamentally altering a course requirement

Tolerating or excusing violent or abusive behaviors

Non-adherence to policy and procedure that is consistent with educational/clinical program

Personal services such as toileting, clothing management, feeding, medications, etc.

## Disability Services/Resources

Provide services and assistance to students with disabilities

May have a centralized and/or decentralized process

- Create a relationship with staff

- Explain OT and technical standards

- Discuss various forms of clinical expectations (Level 1, Level 2 fieldwork and other “outside the classroom” requirements (i.e. research, etc.))

- Seek assistance when experiencing issues with a student in the classroom and/or clinical setting

## Student

Responsible for identifying the need for accommodation and engaging in interactive process to determine appropriate accommodation prior to engaging in academic or other activities (i.e. fieldwork, etc.)

- Cannot come back after the fact and request exemption or “retake”, etc. based on disability

- “My disability made me do it” is not a defense

Responsible for providing documentation to substantiate disability and need for accommodations in a timely manner

Documentation should be handled/managed by disability services, not the academic department

### **Fieldwork Site**

- Covered by the ADA if public or private entity (exemption for Religiously controlled and operated)
- Cannot discriminate on the basis of disability in the acceptance of fieldwork students
- Shared obligation between the fieldwork site and the educational institution to ensure that the student receives the necessary accommodation(s)
- Fieldwork Educator Agreements should contain language regarding the obligations/responsibilities for accommodating students with disabilities

### **Not Everything is About the Disability**

Individuals with disabilities are people first and experience similar everyday problems as counterparts without disabilities

- Separate out what is “disability” and what is not
- Treat all individuals the same, do not make the disability the focus of interactions
- Hold students with disabilities to the same standards as those without disabilities
- Accommodations are to “level” the playing field, not to give an advantage to the student
- Be open to a wide range of options for accommodation, never say “no” unless you have explored and considered all of the options