What is a reasonable Accommodation?

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(The lower case "r" on the word "reasonable" in the title above is not a typographical error. It is written this way to clarify the distinction between "Reasonable" accommodation as defined under federal law and the way the term will be used in the discussion that follows. Section 503 of the Rehabilitation Act of 1973 and Title I of the ADA give a definition of "Reasonable" accommodation in the context of employment. In Subpart E of Section 504 (dealing with postsecondary education) the term "appropriate academic adjustment" is used to describe the accommodations that might be required. The ADA does not speak specifically to the "academic" nature of accommodations, but rather includes educational entities under the broader description of necessary action. Typically, then, a discussion of accommodations required under the ADA centers on whether an accommodation is "reasonable" in the sense of the adjective, not the legal definition.)

A Clarification of Responsibility

Federal law requires that no (otherwise) qualified person with a disability shall be denied a benefit or opportunity or excluded from participation solely on the basis of that disability. An individual with a disability is qualified if, with or without reasonable accommodation, they meet the same eligibility requirements and standards of behavior and performance demanded of anyone else. When exploring compliance under the law, it is not uncommon for a discussion of accommodation to focus on the issue of documentation of disability — "if he/she has a disability, then we will provide accommodation." In fact, the documentation of disability and of the need for accommodation is only the first step in the process of receiving accommodation. The question of whether an accommodation is necessary for an institution of higher education (i.e., should be provided) may not hinge on whether or not the person has a disability, but rather on whether or not the accommodation needed is reasonable.

In some instances, an individual with a disability may need no accommodation to fully meet the eligibility criteria and standards required for inclusion. In some instances, the individual with a disability may meet the criteria and standards provided that a reasonable accommodation is provided or a modification is made. In some instances, an individual with a disability may be able to meet the eligibility criteria or standards only if an accommodation is made that goes beyond what is "reasonable." In these instances, the person with a disability is not otherwise qualified and it is not discriminatory to exclude them from the benefit or opportunity.

What is a reasonable Accommodation?

In the context of higher education, it is easier to define what is not reasonable and assume that if the accommodation needed does not clearly fall under those guidelines, it is probably reasonable! There are three kinds of accommodations that are not considered reasonable: (1) It is not a reasonable accommodation if making the accommodation or allowing participation poses a direct threat to the health or safety of others; (2) It is not a reasonable accommodation if making the accommodation means making a substantial change in an essential element of the curriculum (educational

viewpoint) or a substantial alteration in the manner in which you provide your services; and (3) It is not a reasonable accommodation if it poses an undue financial or administrative burden.

(1) Direct Threat to the Health or Safety of Others

An accommodation is not reasonable if it poses a direct threat to the health or safety of others. In order to establish a direct threat, the institution must be able to document a substantial risk of significant harm. Concern about direct threat arises most frequently in relation to allied health and professional programs in which the student's ability to provide safe and appropriate quality care is questioned. It should be noted that the mere existence of a disability does not provide evidence of direct threat. Nor does the possibility of a difficulty arising constitute a substantial risk of significant harm. While an institution may be able to make a case for "direct threat" in the instance of a deaf nurse or early childhood education major with limited vision, it would be a hard argument to make for these same students in an English or Philosophy class.

It is important to note that under the ADA the direct threat must be to someone else. The individual with a disability has a right to choose to assume the risk to self in the same way that anyone else who participates chooses to assume that risk. A blind individual could not be denied participation in a hiking class that covers rough terrain because of a fear that he/she might trip and fall, but it might be appropriate to deny participation to this individual in a scuba diving class in which participants are paired up and responsible for monitoring each other's safety through the visual inspection of valves and gauges.

(2) Substantial Change in an Essential Element of Curriculum

In the academic context, an accommodation is not reasonable if it means making a substantial change in an essential element of a course or a given student's curriculum. It is the institution's responsibility to demonstrate both that the change requested is substantial and that the element targeted for change is essential to the conduct of the course or curriculum. Whether or not the change requested is substantial/essential may be a judgment call on behalf of the administrators and service providers charged with making those decisions but it is not unusual for the decision to be a fairly logical one.

• An institution may logically decide that asking them to make a substitution for basic math coursework for a Business major is not reasonable; not only is it appropriate to assure that anyone graduating with a degree in Business has some basic competency in math, but the skills mastered in that basic coursework will serve as the underpinning for much of the advanced course work in the field.

• An institution may not logically decide that it is not reasonable to make a substitution for a math course that is the only math requirement (3 hours) in a 150 hour course sequence for an early childhood education major; this 3-hour requirement is neither a substantial part of this curriculum nor essential to the course of study.

(NOTE: In both examples above, it is assumed that the individual making the request has already been determined/documented to be a person with a disability which substantially impacts on their ability to follow the standard curriculum regarding the math requirement)

• An institution may logically decide that demonstrated mastery of a foreign language is essential for a deaf student in International Studies and that a substitution for the foreign language requirement is not reasonable.

• An institution may not logically decide that demonstrated mastery of a foreign language is essential for a deaf student majoring in Philosophy because he/she is enrolled in the College of Arts and Sciences and "everybody in Arts and Sciences has a foreign language requirement" unless the faculty has engaged in legitimate academic discourse to determine that foreign language is an integral part of the Arts and Sciences degree granted by this institution (i.e., just saying "this is a requirement" is not enough; until it is established that the decision is curricular in nature, rather an arbitrary, the institution has not discharged its burden).

Sometimes the question hinges not on the course of study but the manner in which a specific course is conducted.

• In an intensive Weekend MBA program designed to give students intensive experience in working cooperatively with classmates, a student who (for legitimate disability-related reasons) will not be able to attend class regularly and participate in group experiences may be denied admission to the program. To ask that the model of delivery be altered to focus on something other than this cooperative learning model is asking for a substantial change in an essential element of course design.

• On the other hand, to demand that students in an Accounting class finish a requisite amount of work in a limited amount of time and thus refuse the accommodation of extended time in testing is not appropriate. Although the instructor may have traditionally measured speed of calculations as one element in grading, this is not essential to the demonstrated of mastery of the subject matter. There is no requirement for a substantial alteration in what is being taught in this instance — the faculty member is not teaching "speed".

(3) Substantial Alteration in the Manner in Which Services are Provided

From an administrative point of view, it is not a reasonable accommodation if it means making a substantial alteration in the manner in which you offer your goods and services (in this case, educational opportunities and everything that go with them).
Sometimes this discussion revolves around method of delivery, and sometimes on the opportunity being delivered.

• An institution that does not have a distance learning program, allowing students to access courses or degrees from alternative sites and/or through various electronic media is not required to create such an alternative for an academically qualified student with a disability who is unable to reach campus and participate in "hands on", in class learning experiences.

• A commuter institution does not have to create housing options for individuals with disabilities who need to be in close proximity to the campus if it is not involved in housing its nondisabled students.

• On the other hand, it is not unreasonable to expect institutions of higher education to provide textbooks and handouts in alternate media for students with disabilities who cannot use standard print. It is not a substantial alteration in the delivery of opportunity. The opportunity is not the chance to read a book, the opportunity is have access to materials to be used in learning and studying and the institution must see that this opportunity is provided equally to all students regardless of disability.

• An individual with a learning disability who reads more slowly may need to have additional time made available to read materials kept on closed reserve in the library. While others are allowed to check out these materials for 60 minutes at a time, the individual with a learning disability might be allowed 90 minutes. It is not reasonable, however, for the student to request that the library stay open an extra 30 minutes past regular closing time in order to have the full 90 minutes. That would be a substantial alteration in the manner in which the library delivers its services.

Undue Financial or Administrative Burden

An accommodation is not reasonable if it creates an undue financial or administrative burden for the institution. HOWEVER...

• Title II of the ADA (which would encompass all public postsecondary institutions) indicates that an accommodation is not reasonable if it is an undue financial burden but indicates that when examining the cost of provision for auxiliary aids and services the government will be looking at the total resources available in the situation. In other words, it will not be the budget of the Biology Department, or the School of Science, or State University that is evaluated, but the budget of the State of_____ against which the yardstick of "undue financial burden" will be measured.

• In 20 years of case law and findings under Section 504 (which includes public and private institutions), the federal government has never allowed an institution of higher education to refuse to provide auxiliary aids or services solely on the basis of cost. Never.

On the other hand, there may be instances in which a request for accommodation constitutes an undue administrative burden:

• A request from an individual with multichemical sensitivity that no construction work be done on campus during school terms could legitimately be viewed as "not reasonable". The institution must be allowed to maintain and enhance its facilities in order to best serve the full campus community.

• A request from a student with a disability to have the institution reschedule the offering of a needed class to dovetail with the student's transportation arrangements (in other words, offering the class during daytime hours instead of in the evening) is not reasonable (but a request for priority scheduling for the student with a disability to assure placement in the one offering of that class that meets during the day is reasonable).

When a Request is Deemed Unreasonable...

It is important to remember that the institution is only required to make reasonable accommodations to assure equal access to opportunity for persons with disabilities. If the request for accommodation is judged to be unreasonable (as detailed above), it may be refused. However, a request for an accommodation that is not reasonable does not affect the obligation to provide needed accommodations that are reasonable. Saying "no" to a request that is not reasonable should never be viewed as the end of a discussion of accommodation options. If the individual has a documented disability and needs accommodation to assure access, then the institution is obligated to work with that student to determine whether there is some reasonable accommodation that can be devised to provide the access limited by the disability.