



Association of
Title IX Administrators

ADA and Section 504 Foundations for Higher Education

Training and Certification Course

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Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Course Introduction



The primary focus of this course is to provide Title IX Coordinators and administrators with a comprehensive overview of disability laws that govern the institution's work.



Practitioners must ensure that the institution's policies and processes are inclusive of ADA and Section 504 protections and grievance processes.



Our goal is to provide an orientation to the intersections between Title IX and disability work, as well as training for Title IX Coordinators who also serve as an ADA/Section 504 Coordinator.

To Get Us Started

- Gather in small groups (3-5), ideally from different institutions
- Share the following information:
 - Your role regarding Title IX
 - Are you the Accessibility/Disability Services Coordinator as well as the 504/ADA Coordinator?
- Discuss your responsibility regarding disability/accessibility services, accommodations, and grievance processes
- As a group, list your issues/concerns related to addressing disability challenges (to be shared with the larger group)

Introduction to Core Concepts

Section 504, Americans with Disabilities Act, & Other Disability Laws

Core Concepts

- Americans with Disabilities Act (ADA) and Section 504 (504) are designed to **provide equal opportunities, not ensure equal results**
- All qualified individuals with a disability must be provided with aids, benefits, or services that provide an **equal opportunity to achieve the same result** or level of achievement as others
- Institutions may provide a different or separate, benefit, or service than one that is requested
- Effectiveness is key

Who is a Qualified Individual with a Disability?



Have a Physical or Mental Impairment

- Which substantially limits one or more major life activities



Record of Having an Impairment

- Mental or physical



Regarded as Having an Impairment

- Mental or physical

Qualified Individual

- **Qualified** means someone who, with or without reasonable modifications to rules, policies, or practices or provision of auxiliary aids and services:
 - meets the academic and technical standards required for admission or to participate in programs or activities of the educational entity
 - is able to perform the essential functions of the job
- All qualified individuals with a disability must be provided with aids, benefits, or services that provide an equal opportunity

What is a Physical or Mental Impairment?

- Many impairments are listed in federal and/or state laws but not exhaustive lists
- Disability services staff often review documentation to determine whether impairment exists
 - **Physical examples:**
 - Vision, hearing, mobility
 - **Mental examples:**
 - Depression, anxiety, learning differences, neurodivergence
 - **Distinction between “impairment” and “disability”**
 - Not all impairments result in a substantial limitation on a major life activity
- Disability services staff are **not diagnosing** or determining documented diagnosis validity

What is a Major Life Activity?

- Physical or mental impairment **must substantially limit** one or more major life activities
- Daily functioning and every day life experiences, including:
 - Seeing, hearing, eating, sleeping, talking, walking, sitting, concentrating, thinking
 - Interacting with others
 - Caring for oneself and ability to perform manual tasks
- ADA provides a list of major life activities, though not exhaustive

“Record of” and “Regarded as” Having an Impairment

Record of Having an Impairment

Individual has a history of having a mental or physical impairment that substantially limits one or more major life activities

Regarded as Having an Impairment

Person may or may not have a qualifying impairment but is treated as having an impairment that qualifies as a disability

Four Key Laws to Know

Section 504 of the
Rehabilitation Act

Fair Housing Act

Americans with
Disabilities Act

State Laws

Section 504 of the Rehabilitation Act (1973)

- **Prohibits discrimination** on the basis of disability in **all programs or activities** that receive federal financial assistance
- Forbids institutions from excluding or denying individuals with disabilities an **equal opportunity** to receive program benefits and services
- Enforced by the U.S. Dept. of Education, Office for Civil Rights

Americans with Disabilities Act

- Expansive federal civil rights law that addresses protections for those with disabilities in public life
- Applicable to all institutions regardless if they receive federal funding



Title I, Title II, & Title III of the ADA (1990)

Title I

Prohibits discrimination on the basis of disability in **employment**

Title II

Prohibits discrimination on the basis of disability by **public entities, including state colleges and universities**, regardless of whether they receive federal financial assistance

Title III

Prohibits discrimination on the basis of disability in **private education facilities and in the activities of places of public accommodation**

Section 504 vs. ADA

- Between the two laws, all government-funded programs are covered

Section 504

- Created to protect individuals with disabilities from discrimination for reasons related to their disabilities
- Protections are applied to programs or businesses that receive federal funds

ADA

- ADA Titles I, II, & III strengthen 504 by:
 - Requiring accommodations for individuals with qualified disabilities
 - Extending it to private institutions, workplaces, and to state and local government-funded programs

Fair Housing Act (FHA)

- Language of the law applies to “dwellings,” including housing operated by colleges and universities
- FHA makes it unlawful to discriminate on the basis of disability in dwellings
- Enforced by the U.S. Department of Housing and Urban Development



State Law

- States also typically have laws that address and prohibit discrimination on the basis of a disability
- Recommend consulting with local legal counsel
- Important to be familiar with the intersection between state laws and the institution's grievance procedures

Philosophical Considerations

- Are opportunities equally available?
- Are opportunities/accommodations available in a timely manner, similar to accommodations or modifications provided to individuals without disabilities?
- Will it be more difficult for students or employees with disabilities to obtain the educational/work opportunities than for non-disabled students or employees?
- How can universal design concepts improve access for individuals including individuals with disabilities?

Roles and Responsibilities

ADA/504 Coordinator vs. Disability/Accessibility Services Coordinator

ADA/ 504 vs. Disability/Accessibility Services Coordinator

ADA/ 504 Coordinator Responsibilities

- Publish non-discrimination notice
- Oversee the grievance process
- Investigate grievances
- Should not serve as the Disability Services Coordinator
- Can be the same person as the Title IX Coordinator (TIXC)

Disability/Accessibility Services Coordinator Responsibilities

- Verify accommodation intake requests
- Identify appropriate accommodations
- Liaise with faculty, staff, and supervisors
- Should not serve as ADA/ 504 Coordinator

Discussion: Institutional Roles

Intersection with Other Institutional Standards

Important Intersections

- **Students** are responsible for meeting
 - Academic and Technical Standards
 - Student Conduct Standards
- **Employees** are responsible for meeting:
 - Employment Essential Job Functions
 - Employee Conduct Standards

Reasonable accommodations do not change these core standards



Academic and Technical Standards

- Institutions need clear, operationalized standards for academic programs
- All students need to be aware of standards prior to program admission
- Hold all students to defined standards



Conduct Standards

- Applicable to student or employee issues
- Hold individuals accountable
 - Apply the applicable conduct code regardless of mental health issues
 - Early conduct meetings and interventions for low-level violations will help mitigate escalation and promote accountability and behavior change
 - Adjust sanctions to match the situation and document

Essential Job Functions (Employees)

- Typically applied to employees, but can apply to student employees
- Detail in written job description
- Employers must discern whether reasonable modifications enable an employee to complete essential job functions



“Qualified” Takeaways

- Qualified individuals must meet the standards of their academic program or job
- Institution must have:
 - Clear definitions of degree requirements, courses of study, and course requirements
 - Clear job descriptions that explicitly state essential job functions



Accommodation Process Overview

Process Overview

- Institution receives accommodation request from student or employee
- Individual provides required documentation of diagnosis and impact on major life activity from health care provider to establish disability
- Individual discusses functional limitations and barriers presented by disability
- Institution engages in interactive process to establish reasonable accommodations



Documentation Standards

Documentation

- Typically comes from student/employee's medical, mental health, or another clinician
- Should provide needed information on the diagnosis and nature of the substantial limitation on a major life activity
- May require follow-up with clinician with student/employee written consent
- May help disability/accessibility services staff analyze and resolve any disagreement between the institution and individual about a specific accommodation request



Documentation Review

Disability/Accessibility Services Coordinator typically reviews documentation

- **Review includes:**
 - Document(s) that describe(s) the nature of the disability
 - Documentation of the underlying impairment
 - Accommodations needed
- Allows institution to evaluate what accommodations may be necessary



Interactive Process

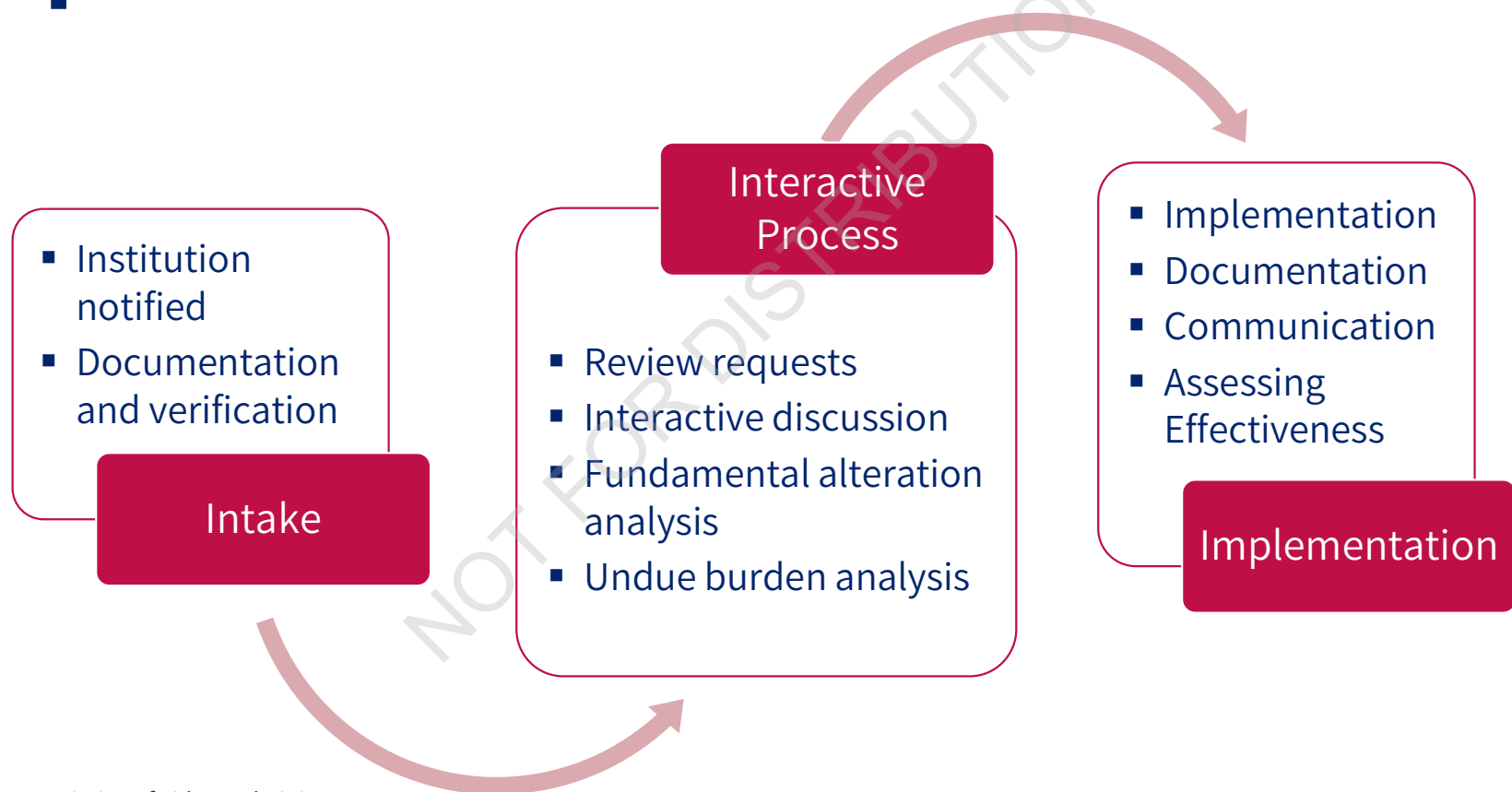
- Institutions must engage in the interactive process to determine the most appropriate reasonable accommodations
- Always a **case-by-case assessment**
- Back-and-forth communication with the individual to “get it right”
- May put same/typical accommodations in place for like situations, but always **remain flexible** and **follow interactive process each time**



What is an Adequate Interactive Process?

- Reviewing requests and working through the interactive process can be quick or might take some back-and-forth
- Disability/Accessibility services staff may need to work with other staff, supervisors, and faculty to determine possible accommodations
- Institution not required to adopt accommodation requested if institution provides an equivalent alternative
- Accommodations must be provided in a timely and prompt manner
- Documentation of each step of the interactive process is key

Interactive Process to Implement Accommodations



K-12 Individualized Education Plans (IEP)

- Higher education institutions are not obligated to follow a student's IEP/504 plan from a K-12 school/district
- However, an IEP/504 Plan can provide confidence in underlying diagnosis
- May provide insight to appropriate accommodations
- Suitable for new students during initial transition, but permissible to seek updated documentation

Other Considerations

Institutions are not required to provide:

- Personal devices such as wheelchairs
- Individually prescribed devices such as hearing aids
- E-readers for personal use or study
- Services of a personal nature including assistance in eating toileting or dressing
- Institutions **should not prevent the use of these aids**



Key Exceptions

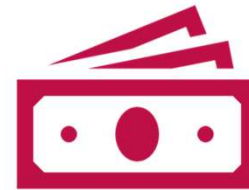
Fundamental Alteration and Undue Burden

Key Exceptions to Specific Requests



Fundamental Alteration

Change to the nature of program,
service, or job



Undue Burden

Financial or administrative burden

Fundamental Alteration

- A specific accommodation is not required when it would result in a **fundamental alteration** of the nature of the program, service, or job function
 - Change to a course or course of study that is so significant that it alters the essential nature or content of the curriculum
 - Change to an approved job description that is so significant that it alters the essential nature of the job
- Students and employees are required to meet applicable defined academic, technical, and conduct standards or essential job functions



Assessing Fundamental Alterations in Academic Coursework

- Consult with faculty who teach course (and possibly department chair)
- Work with faculty to identify the essential academic and technical standards of the course, the learning outcomes, and the goals for reaching those outcomes
- Determine modification options
- Understand why an essential standard cannot be altered
 - Would an alteration lower the academic standards of the course or program?
- Not a decision to take lightly; high bar to defend

OCR Fundamental Alteration Guidance

Factors to consider in determining whether an academic and technical standard is essential include:

- Nature and purpose of the program
- Relationship of the standard to the functional elements of the program
- Whether exceptions or alternatives are permitted
- Whether the standard is required in similar programs at other institutions
- Whether the standard is essential to a given vocation for which the program is preparing students
- Whether the standard is required for licensure or certification in a related occupation or profession

Undue Burden

- Undue burden can be a financial burden or an administrative burden
- Fact-specific inquiry; very high bar
- Significant difficulty to provide or significant expense to provide
- Assessed against entire institutional budget
- Almost never apply this exception



Undue Burden Factors

- Nature and cost of the accommodation
- Overall financial resources of the institution and the effect on expenses and resources of the institution
- Size, number of employees and/or students, and type and location of facilities (if the facility involved in the reasonable accommodation is part of a larger entity)
- Structure and functions of the program and site-specific concerns in making the accommodation
- Impact of the accommodation on the operation of the institution

Activity: Fundamental Alteration

Case Study 1

- An employee has diabetes and has recently been having substantial difficulty with neuropathy in their arms and hands
- Their job involves data entry, some paper file organizing, and filing in the student financial aid office
- They have asked to hire a work study student or administrative assistant to do the data entry and filing for them, or to create a new position for them that doesn't require using their hands

Is this a fundamental alteration?

Case Study 2

- A student tells you they cannot complete writing assignments with or without accommodations
- The student requests that writing assignments not be included in their grade

Is this a fundamental alteration?

Case Study 3

- A student with a learning disability requests the use of a calculator and a multiplication table in an introductory arithmetic class
- The instructor of the class is adamant that the accommodation should not be allowed
- In the instructor's opinion, the ability to perform the actual calculations is a basic requirement of the class
- The student asserts that they can do the analytical work, but the sheer memorization is a disability-related problem for them

Is this a fundamental alteration?

Putting It All Together

- Interactive process determines reasonable accommodations
- Communicate with student/employee and others at the institution who need to provide accommodations
- Support student/employee to navigate issues that arise
- Over time, return to the interactive process to update and adjust accommodations as needed



Accommodation Disputes

- The requesting individual may disagree with the disability/accessibility services staff's accommodation determination
- Institutions should have a process in place for the requesting individual to appeal accommodation disputes that may arise
 - The dispute could include faculty
 - Should be overseen by the ADA/504 Coordinator
- Disputes related to offered or provided accommodations are not themselves a basis for discrimination, though could become one in the future

Documentation and Communication Issues

- Clear, detailed documentation is necessary
- OCR has noted that many institutions grapple with poor communication practices, including:
 - Failing to document accommodations provided
 - Failing to document the interactive process
- Communication is key:
 - Nuance and soft skills to navigate accommodations conversations with faculty and/or supervisors



Accommodating Temporary Disabilities

Must accommodate temporary disabilities

- Short timeframe
- Not a permanent need
- Informal approach permissible for a few days up to a few weeks
 - Example: Residential Life gives a student on crutches access to an elevator

General rule: for situations **exceeding three weeks**, it is in the institution's best interest to have the individual request an accommodation through disability services

- Example: Long-term post-concussion issues; pregnancy-related disabilities

ADA/504 Grievance Process

Overview

- ADA and Section 504 require a grievance process for allegations of discrimination on the basis of disability
- ADA/Section 504 Coordinator oversees the grievance process and ensures prompt and effective response
- Notice of non-discrimination must identify the coordinator by name
 - Office address, telephone, other contact info



Basis for ADA/504 Grievance Process

- Discrimination on the basis of disability
- Harassment on the basis of disability
- Violations of ADA/Section 504 resulting in an inability to access the education program or activity
- Provided accommodations had a discriminatory effect



Key Grievance Process Policy Elements



How and where to
file a grievance



Timeframe and
processes to be
followed,
including appeal



Time limit to
complete
investigation
(typically 30 days)



Statement on how
long and where
files are retained

Investigation Process

- **ATIXA recommends** requiring written complaints
- **Gather relevant evidence**, including any interviews (Investigation)
 - Investigation may be formal or informal
 - A single person can investigate and make determination
 - Completed by the ADA/504 Coordinator, an institutional designee, or an external contractor
- **Provide written documentation** of investigation and decision with rationale

Appeals

An appeal process is required by law

- Written outcome should provide information about how to appeal an ADA/504 grievance decision
- ADA/504 Coordinators must identify the following, and specify in policy:
 - Appeal Decision-maker(s)
 - Timeline for appeal
 - Process for considering appeal
- The decision by the Appeal Decision-maker is the final decision
- Individual may still file a complaint with federal or state agency

Recordkeeping Recommendations

- Retain files consistent with other records retention schedules at the institution
- Store records related to ADA/504 grievance processes separate from standard student and/or employee records
- Use an electronic database for ease of access and data collection



Pregnancy and Related Conditions

Overview

- Pregnant students and employees are protected by Title IX, in addition to other applicable federal and state laws
- Ensure that pregnant and newly parenting individuals are supported as needed to access their education and workplace
- Ensure individuals know and understand their rights under Title IX, including the role of the TIXC
- Pregnancy and related conditions are considered from two different lenses under Title IX:
 - Discrimination
 - Temporary Disability



Pregnancy Discrimination Includes:

- Students
- Employees
- Actual or potential pregnancy
- Family status
- Marital status
- Parental status
- “Head of household”
- Academics & access to course offerings
- Admissions
- Athletics
- Break time for employees
- Employment, recruitment, & hiring
- Extra-curricular activities
- Facilities
- Financial assistance
- Funding
- Lactation
- Health Insurance
- Housing
- Lactation
- Leaves of Absence
- Salaries & benefits

Current Title IX Regulations

The regulations specify that Recipients may not:

Have a rule which treats a student differently on the basis of a student's actual or potential

- parental,
- family, or
- marital status

Exclude any student from its education program or activity on the basis of such student's

- pregnancy,
- childbirth,
- false pregnancy,
- termination of pregnancy,
- or recovery therefrom

Proposed Regulatory Definitions (NPRM)

Pregnancy or Related Conditions

Pregnancy, childbirth, termination of pregnancy, or lactation;

- Related medical conditions; OR
- Recovery therefrom

Parental Status

The status of a person who, with respect to another person who is under the age of 18, is:

- A biological parent;
- An adoptive parent;
- A foster parent;
- A stepparent;
- A legal custodian or guardian;
- In loco parentis with respect to such a person; or
- Actively seeking legal custody, guardianship, visitation, or adoption of such a person

Coordinating Student Support

- When **any employee** learns of a student's pregnancy, the employee should provide the student with the contact information for the TIXC
- **TIXC will:**
 - Prohibit sex discrimination
 - Provide options of reasonable modifications
 - Allow access, on a voluntary basis, to any separate and comparable portion of the Recipient's education program or activity
 - Allow a voluntary leave of absence
 - Ensure a lactation space
 - Maintain grievance procedures

Supportive Measures and Reasonable Accommodations

- **Supportive Measures**
 - Provided on an individualized and voluntary basis
 - May not require healthcare provider certification
 - Subject to fundamental alteration analysis
- **Allow individuals to choose** the best (available) options for their circumstances
- Reasonable accommodations are one form of supportive measures
 - Students must complete and meet the academic standards of the course
- **May not require a certification form** from a physician or another provider unless:
 - Certified level of physical ability is necessary for participation
 - Required of **all students** participating

Examples of Supportive Measures

- Supportive measures must be reasonable
- Not all supportive measures are appropriate for all contexts

**Providing
Breaks**

**Excusing
Absences**

**Allowing
Remote
Participation**

**Providing
Course
Flexibility**

**Permitting
Extensions**

Counseling

**Adjusting
Physical Space**

**Arranging
Elevator Access**

Intersection of Pregnancy and Disability

- Pregnancy itself is not a disability under ADA/504 but pregnant students/employees should be treated the same as other individuals who have health issues who have temporarily disabling conditions
- Some pregnancy-related conditions could manifest as a temporary disability
- Address as any other temporary disability using the interactive process
 - Can require medical documentation



Title IX vs. ADA/Section 504 Obligations

Title IX

- Prohibits sex discrimination against the student/employee
- Provides the student/employee with the option of reasonable modifications or **supportive measures**
- Allows access, on a voluntary basis, to any separate and comparable portion of the program or activity
- Allows voluntary leaves of absence
- Ensures availability of lactation space

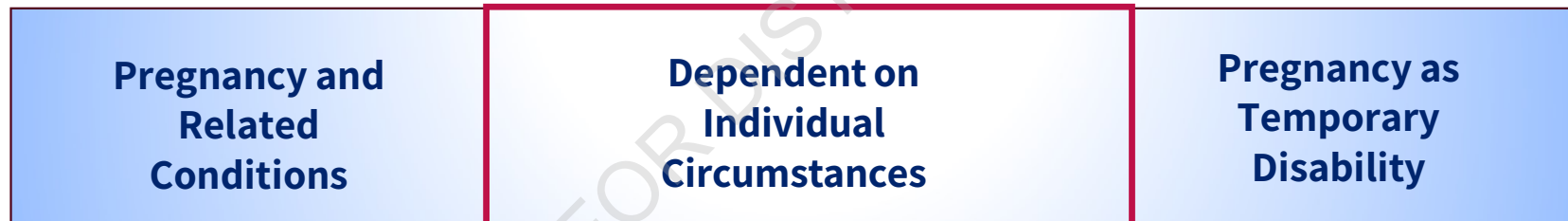
ADA/Section 504

- Prohibits discrimination against individuals with disabilities (including temporary ones)
- Applies when someone has a physical or mental impairment that substantially limits one or more major life activities
- Follows institution's interactive process
- Provides **reasonable accommodations** using the interactive process

Individualized Assessment

Title IX

ADA/504



Athletics, Pregnancy, Section 504, and Title IX

- Most athletic governing bodies follow NCAA's lead
- Follow the direction of the student-athlete's health provider and don't institute restrictions or demand documentation, no matter how well-intentioned
- Student-athletes must be provided with the same types of supports and modifications provided to other student-athletes



Activity: Pregnancy Case Study

Sasha

- Sasha is a gifted athlete
- Her specialty is the 100m hurdles
- The institution always fields a very competitive women's track and field team and often wins conference and national championships
- Sasha is seven months pregnant
- She did not make the cut for the 50m hurdles for the indoor track season and that greatly decreases her chances of being considered for the 100m hurdles once outdoor season starts
- She has come to you to complain that just because she is currently pregnant and not quite as fast, she won't be pregnant once outdoor season competition starts and you know what a good athlete she is

What are some possible solutions?

Service vs. Emotional Support Animals

Animals in Schools

- Schools receive requests to bring animals in schools to make schools more accessible:
 - Service animals (ADA)
 - Assistance animals (FHA)
 - Other animals for therapy, comfort, or emotional support
- Confusing backdrop of disability-based laws that impose differing obligations and apply differently to various locations within a school



ADA Covers Service Animals

- **For students or visitors:**

- Service animal is an animal that has been individually trained to do work or perform tasks for the benefit of an individual with a disability
- Dog or miniature horse

- **For employees:**

- Animals in the workplace should be treated as a request for a reasonable accommodation and the employer **may** ask for appropriate documentation

Service Animal Work or Task Examples

- Guiding people who are blind
- Alerting people who are deaf
- Pulling a wheelchair
- Alerting and protecting a person who is having a seizure
- Reminding a person with mental illness to take prescribed medications
- Preventing or interrupting impulsive or destructive behavior for those with a psychiatric disability

Source: U.S. Department of Justice (February 2020), *ADA Requirements: Service Animals*.



ADA Service Animal Guidelines

- Service animals are working animals, not pets
 - Work or task must be directly related to the person's disability
 - Professional training not required
 - Cannot just be a “service animal-in training” unless required by state law
 - Animals whose sole function is to provide comfort or emotional support do not qualify under ADA
- Institution cannot require documentation that the animal has been:
 - certified,
 - trained, or
 - licensed as a service animal

Service Animals Tips

May only inquire about:

- Whether the animal is required because of a disability and/or
- What work or task the animal has been trained to perform
 - The inquiry is not limited to only the two questions; may ask relevant questions about the animal's training and description of the trained task
- May **not** inquire about the nature or the extent of a person's disability
- A service animal is an extension of their handler
 - Animal is not technically an accommodation
 - Permitted to accompany their handler in all areas of the school/institution unless their presence poses a health or safety risk

Assistance, Emotional Support, Therapy, & Companion Animals

- Federal laws have no provisions requiring emotional support, therapy, or comfort animals be allowed in places of public accommodation
 - FHA allows for assistance animals in “dwellings”
 - Could be a reasonable accommodation to a “no pets” policy, but only for the dwelling itself
- They are usually the personal pets of their handlers and provide comfort or emotional support
- As long as the **animal alleviates the “effects” of the disability** and the animal is reasonably supported, they are acceptable.
- May be an animal other than a dog
- Can request documentation; evaluate how the animal alleviates the disability
- Therapy animals, sometimes hosted by school counselor, are usually not service animals

ESA Documentation

- Confirmation of mental health diagnosis from a medical professional trained to diagnose mental health conditions
- How the animal helps alleviate the condition
- Potential negative effects of the person not having the animal with them
- Whether the animal has any training to do what is needed to alleviate the disability

Additional Considerations

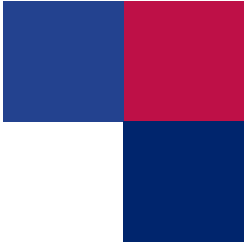
- Roommates or neighbors with allergies
 - Not all allergies create a disability; apply common sense to addressing
- Allergies or fear of dogs are not valid reasons for denying access or refusing service to people using service animals
- Dogs may not be excluded based on breed
- A person with a disability does not have superior rights to the person without a disability



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Questions?

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Join Us for the Next Course

We will provide additional training and case studies on:

- Pregnancy and Related Conditions
- Animals on Campus
- Mental Health and Involuntary Removal
- Website Accessibility
- Issues in Housing and Dining Facilities
- Universal Design



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