

**Student Accommodations  
and 504/ADA Compliance**

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**Student Accommodations and 504/ADA**

- **Student Accommodations**
- Increasing demand
- Why?
- Higher profile - more focus on disabilities, the ADA and recent amendments
- IDEA legacy

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**Student Accommodations and 504/ADA**

- **Trends**
- 11% of college students report having a disability - tripled in last 20 years - (GAO report - October 2009)
- Psychological disabilities represent the fastest growing population on college campuses
- American College Health Association Survey (2007) found that 10% of students were diagnosed with depression

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**Student Accommodations and 504/ADA**

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**GAO survey of Distribution of Main Type of Disability:**

<input type="checkbox"/>	Mental, Emotional or Psychiatric condition/depression	24.3%
<input type="checkbox"/>	Attention Deficit Disorder	19.1%
<input type="checkbox"/>	Orthopedic or mobility impairment	15.1%
<input type="checkbox"/>	Other	15.0%
<input type="checkbox"/>	Specific learning disability, dyslexia	8.9%
<input type="checkbox"/>	Hearing Impairment	6.1%
<input type="checkbox"/>	Visual Impairment	2.7%
<input type="checkbox"/>	Brain injury	1.7%

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**Student Accommodations and 504/ADA**

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**Trends**

While postsecondary enrollment for students with disabilities is increasing, students with disabilities continue to be underrepresented in postsecondary education when compared to their non-disabled peers.

- Post-high school, 63% of students with disabilities were enrolled in postsecondary education compared to 72% of students without disabilities.
- Students with disabilities were also more likely to enroll in 2-year versus 4-year institutions.

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**Student Accommodations and 504/ADA**

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**Changing Student Population**

- Require more services and supports beyond classroom accommodations (services, case management)
- More crisis intervention
- More dual or multiple conditions
- More students take medications for psychological conditions

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**Student Accommodations and 504/ADA**

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**Changing Student Population**

- Students are more aware of their learning needs
- Expect more individualized services/supports
- More aware of their legal rights
- More vocal, self-advocacy
- Expectation of accommodation

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**Student Accommodations and 504/ADA**

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**U.S. GAO Report – 10.28.2009**

- **Higher Education and Disability**  
**"Education Needs A Coordinated Approach To Improve Its Assistance to Schools In Supporting Students"**
- Findings include:
  - Growing population of disabled students in higher education
  - Postsecondary schools use different approaches and accommodations to support students with disabilities
  - Schools face broad range of challenges in supporting students
    - Lack of awareness of rights/obligations by students **and** faculty

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**Student Accommodations and 504/ADA**

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**U.S. GAO Report – 10.28.2009**

**Findings include:**

- Schools face broad range of challenges in supporting students
- Two growing populations of postsecondary students:
  - Veterans with newly acquired disabilities and
  - Students with intellectual disabilities.

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**Student Accommodations and 504/ADA**

**U.S. GAO Report – 10.28.2009**

**Findings include:**

- Three federal agencies – Office of Civil Rights (OCR), Office of Special Education and Rehabilitative Services (OSERS) and Office of Postsecondary Education (OPE) have different missions, priorities, focus on different clients
- Lack of coordination among agencies on information sharing and technical assistance efforts

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**Section 504 of the Rehabilitation Act**

- "No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance . . ." 29 U.S.C. § 794(a)
- **Receipt of federal funds:**
- "any public or private agency, institution, organization, or any person to which Federal financial assistance is extended directly or through another recipient . . ." 34 CFR § 104.3(f)
- Accepting students who receive federal financial aid, post-secondary educational institutions receive Federal financial assistance

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**Section 504 of the Rehabilitation Act**

- A student with a physical or mental impairment which substantially limits a major life activity, a student who has a record of having such an impairment, or a student who is regarded as having such an impairment 34 CFR § 104.3(j)(1)
- "Substantially limited" - Previous regulations under 504
- i) Unable to perform a major life activity that the average person in the general population can perform; or
- ii) Significantly restricted as to the condition, manner, or duration under which the average person in the general population can perform the same major life activity

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### Section 504 of the Rehabilitation Act

- "Substantially limited" - Previous regulations under 504
- iii) Even if an individual has an impairment, he or she is not "disabled" under the act unless that impairment substantially affects one or more major life activities. Temporary, non-chronic impairments of short duration, with little or no longer term or permanent impact, such as broken bones, the flu, or appendicitis, are usually not disabilities. 29 C.F.R. §1630.2(J)

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### Section 504 of the Rehabilitation Act

- **Qualified:**
- "meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity" 34 CFR § 104.3(l)(3)
- In the educational context, courts have given colleges a great deal of deference in setting the qualification standards for their institutions. Academic decisions have a presumption of validity, and schools are not required to accommodate a student by substantially modifying academic programs.

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### Section 504 of the Rehabilitation Act

- **Qualified:**
- **Are current illegal users of drugs excluded from protection under Section 504?**
- "Generally, yes. Section 504 excludes from the definition of a student with a disability, and from Section 504 protection, any student who is currently engaging in the illegal use of drugs when a covered entity acts on the basis of such use. (There are exceptions for persons in rehabilitation programs who are no longer engaging in the illegal use of drugs)."

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### Section 504 of the Rehabilitation Act

**☐ Qualified:**

- ☐ **Are current users of alcohol excluded from protection under Section 504?**
- ☐ "No. Section 504's definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities."

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### Section 504 of the Rehabilitation Act

■ **Academic Accommodations**

- ☐ All academic adjustments should be determined on a case-by-case basis with input from the student with a disability
- ☐ An institution may not charge a student for an academic adjustment or charge the student more for its programs or activities than it charges students without disabilities
- ☐ Modification of academic requirements:
  - Required to modify academic requirements to "ensure that such requirements do not discriminate or have the effect of discriminating . . ." 34 CFR § 104.44

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### Section 504 of the Rehabilitation Act

■ **Academic Accommodations**

- Modification of academic requirements:
  - No modification is required if an educational institution can demonstrate that the academic requirements "are essential to the instruction being pursued . . ." 34 CFR § 104.44
  - Examples: changes in the length of time permitted for the completion of a degree, substitution of specific courses required for the completion of a degree, specific course instruction adaptation

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### Section 504 of the Rehabilitation Act

- **Modification of academic policies:**
  - An institution can not impose rules or policies that "have the effect of limiting the participation" of the student with a disability 34 CFR § 104.44
  - Examples: policies prohibiting tape recorders in classrooms or the use of dog guides may have to be altered

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### Section 504 of the Rehabilitation Act

- **Modification of academic policies:**
- Examinations
  - An institution must "provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course . . ." 34 CFR § 104.44
  - Examples: extended time for test taking, submission of oral answers, a room with reduced distractions for test taking, assistance of a reader

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### Section 504 of the Rehabilitation Act

- **Auxiliary Aids**
  - An institution must provide a student with a disability auxiliary aids if failure to do so will result in the denial of benefits, exclusion from participation or other discrimination
  - An institution has flexibility in choosing which auxiliary aid to provide a student, but such aid must be effective in meeting the student's needs; therefore, the institution must analyze the appropriateness of an aid or service in its specific context

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**Section 504 of the Rehabilitation Act**

**□ Auxiliary Aids**

- **Not Required to Provide Personal Devices or Services:** An institution does not have to provide personal attendants or individual devices
  
- Examples: taped texts, interpreters, readers in libraries, adapted classroom equipment, appropriate aids needed to locate and obtain library resources

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**ADAA**

**The ADA Amendments Act**

- **When passed by Congress in 1990, definition of disability intended to be construed broadly and based on Sec. 504**
- **Supreme Court decisions construed term "disability" too narrowly**
- **Current regulations defining "substantially limits" as "significantly restricted" inconsistent with Congressional intent**

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**ADAA**

**The ADA Amendments Act**

**□ Purposes**

- **Restore broad protections originally intended by Congress**
- **Reject Supreme Court's view that disability should be determined by impact of mitigating measures**
- **Reject Supreme Court's holding that ADA requires a "demanding standard" and that an impairment "severely restricts" major life activities**

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**ADAA**  
**The ADA Amendments Act**

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□ **Definition of disability**

- Physical or mental impairment substantially limiting major life activity;
- A record of such impairment;
- Being "regarded as" having such an impairment.

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**ADAA**  
**The ADA Amendments Act**

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□ **Definition of disability**

- Under ADAAA, definition will be construed more broadly
- Mitigating measures will not be considered
- Impairment can be disability even if episodic or in remission.
- "Effect of these changes is to make it easier for an individual . . . to establish that she has a disability within the meaning of the ADA."

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**ADAA**  
**The ADA Amendments Act**

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□ **Mitigating Measures include**

- Medication, medical supplies/equipment, vision/hearing devices, prosthetics, mobility devices
- Assistive technology
- Reasonable accommodations
- Learned behavioral or adaptive neurological modifications.

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**ADAA**  
**The ADA Amendments Act**

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□ Major life activities include

- Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, reading, concentrating, thinking, communicating and working.

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**ADAA**  
**The ADA Amendments Act**

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□ "Regarded As" Disabled

- Broader definition of "regarded as" disabled covers anyone subjected to an action prohibited by ADA because of real or perceived physical/mental impairment
- Excludes transitory (less than 6 mos.) and minor impairments
- Individuals regarded as disabled not entitled to accommodations

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**ADAA**  
**The ADA Amendments Act**

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□ Impact on Section 504?

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**Accommodating Students**

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- ❑ When is a College required to accommodate a student or applicant?
- ❑ A college is only required to accommodate known disabilities.
- ❑ There is no one specific way for a student to notify a school about a disability, and the school's knowledge of the disability may be implied.

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**Accommodating Students**

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- ❑ What does a student need to communicate to trigger the College's obligation to offer a reasonable accommodation?
- ❑ The student must provide the College with enough information to show the existence of an impairment, and its impact on a major life activity.
- ❑ No magic words are required
- ❑ Does a student always have to release all medical records to obtain accommodations?
- ❑ NO. The College may ask for reasonable medical documentation. A student typically does not need to produce their entire medical or mental health history.

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**Accommodating Students**

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- ❑ **Are there any impairments that are automatically disabilities?**
- ❑ An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.
- ❑ **Does a medical diagnosis of an illness automatically mean a student is eligible for services under Section 504?**
- ❑ No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.

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**Accommodating Students**

- Accommodations are individually determined and are based upon the documentation presented to determine a student's eligibility for services.
- A qualified professional in the area of the disability must conduct the evaluation and should provide documentation submitted on the official letterhead of the professional and signed by him/her.
  - Documentation should be current
  - should indicate when student was last seen
  - any changes expected in condition

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**Accommodating Students**

- Documentation should be comprehensive
  - should describe assessment procedures used to reach diagnosis
  - narrative of evaluation results
  - describe student's functional limitations and how it might affect academics
- Accommodations sought must be appropriate and supported by documentation
  - should describe specific accommodations sought and rationale for each

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**Accommodating Students**

- What if College does not agree with need for accommodations or diagnosis
- Need to have a basis to challenge diagnosis
- Seek second opinion?
  - who pays?
    - College (unless third party payer)

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**Accommodating Students**

**Examples of services that might be provided include:**

- Interpreters
- Note takers
- Taped texts
- Readers
- Videotext displays
- Talking calculators
- Braille calculators, printers, or typewriters
- Telephone handset amplifiers
- Closed caption decoders

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**Accommodating Students**

**Examples of services that might be provided include:**

- Open and closed caption TV
- Voice synthesizers
- Specialized gym equipment
- Assistive listening devices or systems
- TTYs or TTDs
- Reaching device for library use

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**Accommodating Students**

**Examples of modifications of school policies include:**

- Not assessing penalties for spelling errors on papers or exams.
- Allowing substitutions for certain required or prerequisite courses.
- Allowing extra time on exams or to turn in papers.
- Providing exams in an alternate format.
- Allowing a reduced course load and extra time in which to earn a degree.
- Reassigning a classroom to an accessible location.
- Providing assistance in applying for financial aid.

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**Accommodating Students**

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**□ Process**

- Student's responsibility to approach College/instructor
- Recommend that student's contact take place before first week of classes.
- Allows time for College/instructors to consider the requested accommodations.
- If a student does not make request until later in the semester, accommodations are to be provided from that point forward, but not retroactively to the beginning of the course.
- For example, a student cannot ask to re-take an exam with extended time if request for accommodations not made until after exam was given.

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**Accommodating Students**

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**□ Syllabus Statement Regarding Accommodations**

- Sample:
- "Students who need accommodations are asked to arrange a meeting during office hours the first week of classes, or as soon as possible if accommodations are needed immediately. If you have a conflict with my office hours, an alternate time can be arranged. To set up this meeting, please contact me by E-mail/phone. Bring a copy of any documentation supporting your request. If you need assistance in obtaining that documentation, make an appointment with (name of College Student Services/Disabilities department)"

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**Accommodating Students**

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**□ Process – Cases**

- Edmond Community College (WA) (OCR) (upholding college's refusal to accommodate student who only provided one hour notice of disability prior to test)
- University of LaVeme (CA), Case No. 09-96-2148 (OCR) (three and one half month delay between request for accommodation and approval unreasonable)

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**Accommodating Students**

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**□ Process – Cases**

- Temple University (PA), Case No. 03-99-2049, (OCR) (no duty to accommodate student who failed to follow established procedures)
- University of New Mexico, Case No. 08-98-2070 (OCR) (no discrimination finding in light of student’s failure to follow established procedures for receiving accommodations and failure to notify university of disability until after dismissal)
- Florida Atlantic University, Case No. 04-97-2032 (OCR) (upholding practice that students give minimum three days notice of need for testing accommodations and one week notice for exams)

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**Accommodating Students**

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**□ Accommodations – Cases**

- Cabrillo Community College (CA), Case No. 09-96-2150 (OCR Region D) (upholding college’s refusal to provide semester-long “home tutoring” for course with lab component; college’s responsibility to provide auxiliary aids does not generally extend “beyond the physical boundaries of its educational programs wherever those programs are operated” and home-study is a personal service not required by Section 504 or the ADA)
- Metropolitan State College (CO) Case No. 08-98-2013 (OCR Region VIII) (upholding refusal to waive multiple choice tests as fundamental alteration based on results of deliberative process)
- Pima Community College (AZ), Case No. 08-97-2014(OCR Region VIII) (upholding professor’s refusal to allow student to take open book exam which defeated exam’s purpose of measuring recall, despite physician’s recommendation based on student’s poor memory occasioned by learning disability)

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**Accommodating Students**

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**□ Accommodations – Cases**

- Central Connecticut State University, Case No. 01-97-2005 (OCR Region I) (upholding professor’s refusal to allow student to take open book exam; essential instructional requirement was to demonstrate knowledge and mastery of course material)
- University of Massachusetts, Case No. 01-97-2095 (OCR Region I) (upholding professor’s refusal to allow student to take exam at home; recall deemed essential)
- Salem State College (MA), Case No. 01-95-2089 (OCR Region) (Section 504/ADA do not give students right to demand particular accommodation; upholding testing arrangement in lab in professor’s presence rather than testing center)

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**Accommodating Students**

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**□ Conduct – Cases**

- *Ascani v. Hofstra University*, 173 F.3d 843 (2nd Cir. 1999)(upholding dismissal of student who threatened professor, even if the behavior caused by mental impairment; student is not otherwise qualified as she posed a direct threat)
- *Childress v. Clement*, 5 F.Supp. 2d 384 (ED. Va. 1998) (upholding dismissal of graduate student for plagiarism, where student claimed disability caused conduct; waiving university’s honor code unreasonable)
- • *University of Michigan*, Case No. 15-99-2142 (OCR Region XV) (university entitled to dismiss student and require evaluative information before returning after engaging in sexual assault, even if related to his disability)

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**Accommodating Students**

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**□ Clinical accommodations – Cases**

- *Mt. Hood Community College (WA)*, Case No. 10-96-2010 (OCR Region X) (upholding requirement that student with epilepsy be seizure-free for six months before enrolling in lab and clinical requiring machine operation)
- *Ohio State Schools of Cosmetology*, Case No. 05-94- 2158(OCR Region V) (upholding requirement that student provide medical documentation that epilepsy was under control following incident)
- *St. Petersburg College (FL)*, Case No. 04-00-2170 (OCR Region IV) (upholding nursing program’s refusal to waive clinical component of program or provide attendant to perform clinical aspects)

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**Accommodating Students**

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**□ Clinical accommodations – Cases**

- *Morehouse College of Medicine (GA)*, Case No. 04-98-2151 (OCR Region IV) (medical school did not violate § 504 by refusing to modify its clinical rotations “call” schedule for student diagnosed with bipolar disorder; interfered with her residency preparation)
- *Bowling Green University (OH)*, Case No. 05-98-2143 (OCR Region V) (upholding refusal to grant accommodations of reduced case load, rotation at a distant site, request to work with certain types of clients, and permission to complete reports at home)
- *Board of Education of the City of New York*, Case No. 02-97-1125, (OCR Region II) (upholding dismissal of student with mobility impairment who could not participate in all clinical requirements of LPN program due to her inability to lift, ambulate and transfer patients)

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**Accommodating Students**

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**Confidentiality**

- College employees have an obligation to maintain confidentiality regarding a student's disability.
- College should provide information to staff and faculty only when necessary in evaluating and/or facilitating accommodations, auxiliary aids and/or services.
- Except where permitted by applicable law, disability information cannot be shared with non-College employees without the student's express written permission.

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**Accommodating Students**

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**QUESTIONS?**

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**Student Accommodations  
and 504/ADA Compliance**

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