

HANDLING STUDENT REQUESTS FOR DISABILITY ACCOMMODATIONS: GUIDANCE FOR FACULTY

Washington and Lee University - - 2011-2012
Office of General Counsel

I. THE SCOPE OF OUR LEGAL OBLIGATION

- **WHAT IT IS: NON-DISCRIMINATION MANDATE (504/ADA)**
Section 504 of the Rehabilitation Act of 1973 prohibits recipients of Federal funds from discriminating against program participants on the basis of disability. Title III of the Americans with Disabilities Act of 1990 prohibits places of "public accommodation" (including private colleges) from discriminating against any individual on the basis of disability.
- **WHAT IT IS NOT: AFFIRMATIVE OBLIGATION TO IDENTIFY AND PROVIDE INDIVIDUALIZED EDUCATION (IDEA)**
Individuals with Disabilities Education Act of 1975 (IDEA) is a funding statute enacted to assure that all disabled children have individualized education and related services in grades K-12.

W&L has no obligation to seek out/identify students with disabilities, but must assure them an equal opportunity to participate and to achieve once they have self-identified and requested accommodation(s), if W&L finds they have a qualifying disability.

II. POLICY OVERVIEW AND CONSIDERATIONS IN APPLICATION

- Important that faculty not act independently on direct student requests, but refer students to accommodation policy and appropriate Dean (Assistant Dean of the College or Associate Dean for Academic Affairs of the Law School). This ensures consistent handling and verification of qualifying disability.
 - ❖ **College policy, procedures and forms:**
<http://www.wlu.edu/x35538.xml>
 - ❖ **Law School policy, procedures and forms:**
<http://www.wlu.edu/x35536.xml>
- Mechanics of implementing offered accommodation(s) -- Dean's Letter of Approval of Disability Accommodation

III. RELATED OBLIGATION OF CONFIDENTIALITY

- Confidentiality of Accommodation/Disability/Medical Information -- share only on a "need to know" basis

IV. SHORT-TERM NON-DISABILITY ASSISTANCE/ADJUSTMENTS

- In some circumstances not involving disabilities (e.g., broken leg, acute trauma over family death or sexual assault, short-term depressive episode), Health and Counseling staff may contact the Assistant Dean of the College or Associate Dean for Academic

Affairs of the Law School on behalf of a student for short-term assistance, or the Assistant Dean of the College or Associate Dean for Academic Affairs of the Law School, may work with a student, to craft appropriate short-term adjustments.

- Such short-term non-disability assistance/adjustments should not be used in place of formal disability accommodations process, but only in situations that do not suggest the presence of a qualifying disability.

V. SOME CRITICAL DEFINITIONS

1. DISABILITY

- Impairment (Physical or Mental)
E.g., "learning disability" and "hearing loss" are impairments,
BUT they do not necessarily rise to the level of a "disability"
- Substantially limits
Involves considerations of nature, severity, duration of impairment
Evaluate in mitigated state: with treatment, medication, etc.
Comparison to Average Person in General Population
- Major Life Activity
These include caring for one's self, performing manual tasks, walking,
seeing, hearing, speaking, breathing, learning, and working.
- Record of/Regarded as

Don't create a disability where there isn't one! If you treat a person as disabled even if they are not (e.g., allowing a requested accommodation without verification of disability), the person may be considered "regarded as" disabled under 504/ADA protections.

2. QUALIFIED PERSON

- Meets basic eligibility standards with or without reasonable accommodations
- Is not a "direct threat" to others
Requires objective evidence of substantial risk of significant harm
Not mere subjective concern or speculation

3. "REASONABLE" ACCOMMODATION/MODIFICATION

- Must make reasonable modifications to program requirements as necessary so that requirements do not have the effect of discriminating on the basis of disability OR when necessary to afford students with disabilities an equal opportunity to participate and to achieve in programs and services provided.
- No need to make substantial or fundamental program changes. Requirements that university can demonstrate are essential to a program will not be regarded as discriminatory.
- No requirement to assure disabled student success, nor to grant modification of student's choice.