



CAATE

Commission on Accreditation
of Athletic Training Education



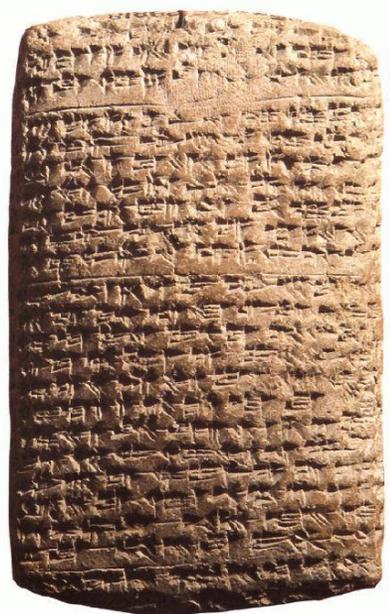
“Accommodations in Clinical Learning Environments” Webinar

November 16 | 2 pm ET

Presenter: L. Scott Lissner

The First 5,000 Years of Disability Policy

A 5000 year old Sumerian clay tablet, the code of Ur-Nammu, king of the city-state of Ur, included provisions to compensate injured workers. Similar provisions are found in the Code of Hamurabi a thousand years later and in today's Worker's Compensation laws.



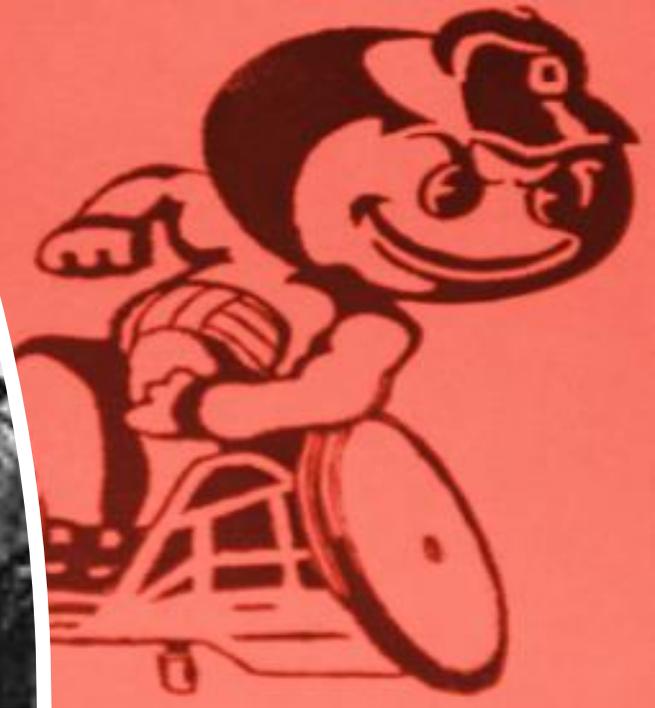
In thirteenth century France hospices for provided uniforms that signified individual had a **genuine** disability and a royal license to beg.



A hundred years later several shogunates in Japan supported guilds for the blind (the Tōdōza) whose members were itinerant musicians, masseurs, and acupuncturists.



In 1856 the US Congress created the Columbia Institution for the Instruction of the Deaf and Dumb and Blind. In 1864 Pres. Lincoln signed a law allowing the school to confer college degrees. In 1894 it was renamed Gallaudet.





Legal Context

- Pre 1964 –Support Oriented
- 1964 – Architectural And Transportation Barrier Removal Act
- 1973 - Section 504 of the Rehabilitation Act.
- 1975 – PL 94-142 (IDEA)
- 1977- Section 504 Regulations
- 1988 - Fair Housing Act Amendments
- 1990 – Americans with Disabilities Act
- 2009 – ADA Amendments Act



Basic Objectives of Section 504 and the ADA



Full participation in social, political and economic activities by:

- Ending the segregation and isolation of persons with disabilities
- Securing equal opportunities
- Ensuring equitable treatment
- Fostering independence

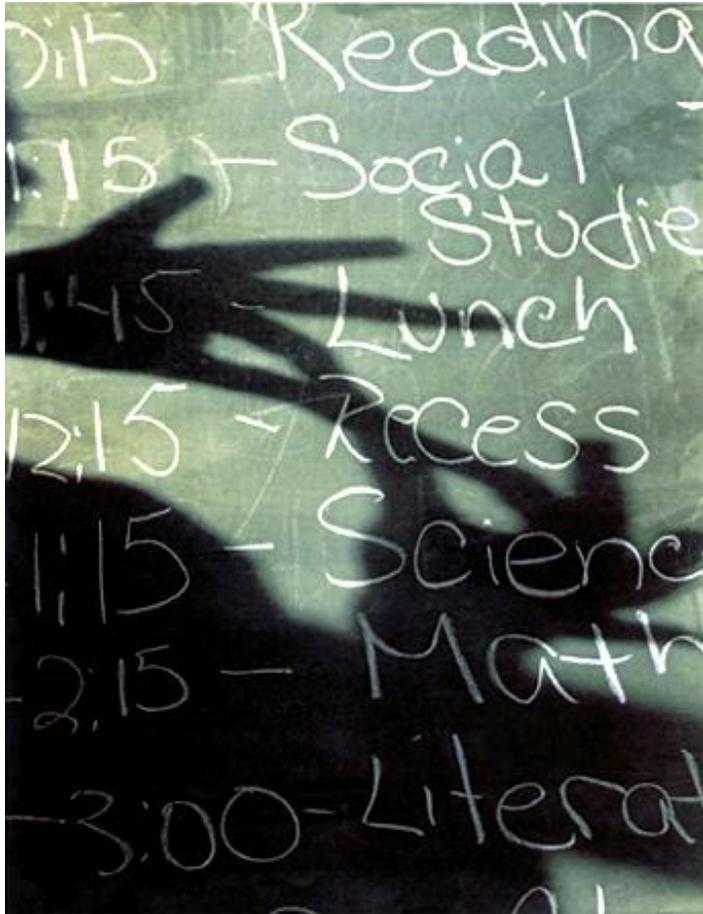


Definition of Disability



- A physical or mental impairment that substantially limits a major life activity
- A record of such an impairment
- Being regarded as having such an impairment

Accommodations In and Out of the Classroom



- A modification to policy, procedure, practice, or the environment
- the provision of a tool, technology, or service
- that partially mitigates the impact of a disability allowing an individual to participate
- Academic Accommodations
 - Interpreters, Note Taker, extended Time on Testing, Braille, Attendance Modifications
- Program Accommodations
 - Time to Degree, Course Substitutions, Priority Registration....
- Field Placement Accommodation
 - Location, Schedule, Interpreters, Braille ...

Accommodations focus on How

CONDITIONS



MANNER



DURATION



How is the individual prevented from or limited when engaging in an activity?

- Effort, endurance and length of time required to perform the activity
- tools that assist in performing the activity
- Changes to the environment that allow the individual to engage in the activity

Provide a different path to the same end





When Are Accommodations Reasonable?

- **Addresses an impact of the disability**
 - Manner, Condition & Duration not outcome
- **Does not create a fundamental alteration**
 - Comparable experience, performance or evaluation
- **Does not create a “Direct Threat” to others**
 - Likely, imminent, significant & can not be substantially reduced with accommodations
- **Does not create an undue burden**
- **Administrative, Financial,**

Safety Considerations

- The nature, severity and duration of the potential harm;
- The likelihood that the potential harm will occur;
- The imminence of the potential harm;
and
- The potential for reasonable accommodations to mitigate the risk.

“It is possible to envision situations where an insistence on continuing past requirements and practices might arbitrarily deprive genuinely qualified handicapped persons of the opportunity to participate in a covered program.”

(*Southeastern Community College v. Davis*, 442 U.S. 397)



Effective Accommodations in Field Placements

- Process conversation between colleges & site
- College must give students notice of accommodation and grievance process
- Confidential conversation between the student and the college
- Rely on the sites local process as much as possible
- Student needs to understand the potential consequences of not disclosing at the site
 - Impact on performance
 - Interaction with "Technical Standards"
- Withhold Placement for direct threat or demonstrable failure to meet technical standards



Duty to Implement Accommodations in Field Placement?

- Both parties responsible for providing academic adjustments and reasonable accommodations
 - Generally, college will be responsible for auxiliary aids such as an interpreter.
 - Generally field placement will be responsible for modifications to policy and practice
 - Field Placement's duty does not go beyond those required for employees.
 - Field placement will be responsible for architectural access.

What Information Should be Shared with the Field Placement?

- Process conversation between colleges & site
- Student specific information relevant to a request
- Confidential conversation between the student and the college first
- Student needs to understand the potential consequences of not disclosing at the site
- Withhold Placement for direct threat or demonstrable failure to meet technical standards



Academic Standards & Deference

- Academic institutions, making academic decisions, within their areas of expertise, will receive substantial deference from the courts. (Michigan v. Ewing)
- Mere reliance upon tradition or existing rules may well not be a sufficient justification for refusing to implement a requested accommodation (Southeastern v. Davis; PGA v. Martin)
- Deference is earned through adherence to a “diligent” consideration of the request and “alternative means” to achieving the fundamental program objective, resulting in a “rationally justifiable conclusion. (Wynne v. Tufts)



There is no indication of who took part in the decision or when it was made. Were the simple conclusory averment of the head of an institution to suffice, there would be no way of ascertaining whether the institution had made a professional effort to evaluate possible ways of accommodating a handicapped student or had simply embraced what was most convenient for faculty and administration. We say this, of course, without any intent to impugn the present affiant, but only to attempt to underscore the need for a procedure that can permit the necessary minimum judicial review.

Wynne v. Tufts University School of Medicine 932 F.2d 19 (1991)

Technical Standards

- Nonacademic criteria for:
 - Admission, Program participation
- May apply at all times or just at one stage
- Examples
 - Physical abilities in context: Ability to shift a patient in bed, ability to drive, ability to manipulate a particular medical instrument
 - Behaviors in the present: compliance with a code of conduct
 - Safety: does represent a “direct threat to health and safety” to others
- Receive less deference than academic standards



It is important that technical standards and eligibility criteria be established through a collaborative process. Both policy & practice must support that a standard is essential

- University of Houston, OCR# 06-02-2029
- Guckenberger v. Boston University, 657 F. Supp. 106
- Wynne V. Tufts; University School of Medicine, 932 F.2d 19)

Determinations must be made by a group that includes individuals who are knowledgeable in the discipline/area, the available alternatives for instructional delivery and evaluation and disability

- University of Houston, OCR# 06-02-2029
- Guckenberger v. Boston University, 657 F. Supp. 106
- Wynne V. Tufts University School of Medicine, 932 F.2d 19
- School Board of Nassau County v. Arline, 480 U.S. 273

Both policy & practice must support that a standard is essential

Checks on the qualified status of students must focus on necessary information

- 34 C.F.R. 104.4 & 104.42
- Colman v. Zatechka, 842 F. Supp. 1360
- Briggs v. Walker, 88 F. Supp.2d 1196
- Guckenberger v. Boston University, 657 F. Supp. 106
- Wynne V. Tufts University School of Medicine, 932 F.2d 19
- Wong v. Regents of the University of California, 192 F. 3d 807

Elements of Non-Discriminatory Standards

- Establishes a skill or ability rather than a medical condition
- Relate directly to:
 - essential (core) aspects of the program
 - academic or programmatic success
 - to skills necessary to obtain licensure (in licensure programs)
 - the safe performance of the skills the program seeks to develop



Technical standards must delineate observable performance criteria that can be reliably applied, and must be applied to ALL applicants/participants

- 34 C.F.R. 104.4
- University of Houston, OCR# 06-02-2029
- Guckenberger v. Boston University, 657 F. Supp. 106

Standards must be rationally related to program goals objectives and requirements

- 28 C.F.R. 35.130(b)(8)
- Briggs v. Walker, 88 F. Supp.2d 1196
- Theriault v. Flynn, 162 F. 3d 46
- Bowers v. NCAA, 974 F. Supp 459

Standards should not amount to descriptions of impairments or disabilities

- 34 C.F.R 104.44(a)
- Morehouse School of Medicine, 17 NDLR 94
- Life Chiropractic College, 14, NDLR, 257
- Clark v. Virginia Board of Bar Examiners 880 F. Supp. 430, 442
- Carlin v. Trustee of Boston University, 907, F.Supp 509

Standards must be consistently applied to all program participants



- 34 C.F.R. 104.4
- University of Houston, OCR# 06-02-2029
- Guckenberger v. Boston University, 657 F. Supp. 106

An individualized interactive process must be used to determine if reasonable accommodations would allow a student to meet essential standards

- 28 C.F.R 35.104
- Wynne V. Tufts University School of Medicine, 932 F.2d 19
- School Board of Nassau County v. Arline, 480 U.S. 273
- Southeastern Community College v. Davis, 442 U.S. 397

Developing Technical Standards

Leading Practices and Future Directions for Technical Standards in Medical Education

Laura B. Kezar, MD, Kristi L. Kirschner, MD, Daniel M. Clinchot, MD,
Elisa Laird-Metke, JD, Philip Zazove, MD, and Raymond H. Curry, MD
Academic Medicine, Vol. 94, No. 4 / April 2019

Technical Standards for Nursing Education Programs in the 21st Century

Ailey, Sarah H. PhD, RN, CDDN, APHN-BC; Marks, Beth PhD, RN
Rehabilitation Nursing [42\(5\):p 245-253, 9/10 2017](#)

Maintaining Standards: Promoting Equality

Professional regulation within nursing, teaching and social work and disabled people's access to these professions
<https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/DRC-Maintaining-Standards-Summary-Report.pdf>

Equal Access for Student with Disabilities: The Guide for Health Science and Professional Education – An Essential Resource Book on Disability Inclusion in the Health Sciences 2nd Edition

by [Lisa M. Meeks PhD](#) (Editor), [Neera R. Jain MS CRC](#) (Editor), [Elisa Laird JD](#) (Editor)

Handling Thorny Questions



What Does The Porcupine Smell Like?

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BONUS SLIDES



Preliminary Reviews: Revisiting with Accommodations

- Discuss concerns directly with the student
 - Provide resources including disability services (Refresh notice statements)
 - Collaborate with disability services to implement accommodations
- Document plan for resolution separate from access plan

If the issue arises in field placement, the agency-based field instructor will:

- Discuss concerns directly with the student and the field liaison.
 - Provide resources including disability services
 - Coordinate accommodations with agency processes.
 - ADA Coordinator available to provide agency with technical assistance.
- Document plans for resolution.

The Formal Performance Review

The Performance Review Committee shall have the authority:

- Dismiss the concerns without further monitoring or review;
- Permit the student to continue in the program with particular services or supports in place, including plans for ongoing monitoring or review;
- Require remedial actions by the student
- Dismiss the student from the College of Social Work.

Formal Performance Review

- Accommodations for the process
 - Communications access
 - Time
 - Support person
- Consideration of Program Accommodation Pattern
 - Accommodations are not retroactive
 - Failure to accommodate as a mitigating factor
 - Notice
 - Implementation

Disability and Findings

- Is there a disability?
- Are the standards the same as those applied to similarly situated non-disabled students?
- Is the student receiving the same level of due process?
- Is the student able to argue that disability is an extenuating circumstance **to the same degree** that other forms of extenuating circumstances are considered?
- Was there effective notice of the accommodation process?
- Was the student authorized to receive an accommodation?
- Was the accommodation implemented?
 - If not:
 - Was there a logical nexus between the disability, the missing accommodation and the performance issue?
 - Were institutional actors responsible for the failure?

Academic, Technical & Professional Standards Due Process & Fundamental Alterations

- Was there effective notice of the accommodation process?
- Was the student authorized to receive an accommodation?
- Was the accommodation implemented?
If not:
 - Was there a logical nexus between the disability, the failed accommodation and the performance issue?
 - Were institutional actors responsible for the failure?

PERFORMANCE MANAGEMENT AND EMPLOYEES WITH DISABILITIES

- Establish written performance expectations at the outset.
- Apply performance standards uniformly and consistently to *all* employees, including employees with disabilities.
- Document performance issues early, and *always* Inform employees about observed performance issues.
- Be direct and focus on performance when discussing the problem, not on disability. Explain the consequences of not meeting performance requirements, offer clear expectations for how employees must improve in order to remain qualified, and provide a timeframe for improvement.

- Recognize when disability disclosure, or request for reasonable accommodation, in response to poor performance evaluation is a trigger to engage in the interactive process.
- Offer support and inform employees that assistance is available to enable employees to meet performance standards. Explain how to request assistance. For example, mention something like, *“If you believe there is anything we can do to support you in meeting the required performance standards, please let [XYZ person] know.”* This creates a safe space for disclosure and opens the door to discuss reasonable accommodation, which can play a key role in performance improvement.

- When disability-related information is shared, it becomes obvious to engage in the interactive process.
- Explore, choose, implement, and monitor accommodations to support performance improvement.
- Document the reasonable accommodation plan and monitor accommodations with the goal of resolving performance issues. When reasonable accommodation is addressed as part of the process, prepare separate documentation regarding the accommodation plan, to be retained as a confidential medical record.