

College Students With Disabilities

A Reference for Faculty, Staff and Families



Prepared by the
Disability Resource Office

MASSACHUSETTS MARITIME ACADEMY

Revised 2015

Adapted for Massachusetts Maritime Academy

By

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Selected Resources Consulted in Preparation of this Guide

Americans with Disabilities Act

Title II

Section 504

Americans with Disabilities Act Amendments Act

Bridgewater State College

Disability and Higher Education: Guidance for Section 504 and ADA Compliance

Disability Compliance for Higher Education, 2007 Handbook

Disability Compliance for Higher Education, 2008 Handbook

FERPA

Mass College of Liberal Arts

State University of New York Maritime College

Testing Accommodations in Higher Education: Complying with the ADA and Section 504

The Disability Services Office Manual: Model Forms, Policies and Procedures

UMass Dartmouth

United States Department of Justice

United States Department of Education

Students with Disabilities: Preparing for Post-Secondary Education

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Introduction

This guide is designed to serve as a quick reference for information, accommodations and legal requirements in providing equal access for students with disabilities.

The mandate to provide *reasonable* accommodations for students with disabilities comes from federal law and from the mission of the college to provide an educational opportunity to all its students. Massachusetts Maritime Academy is committed to providing campus and academic accessibility for all qualified students.

Appropriate academic adjustments must be determined based on a student's disability and individual needs. However, the college is *not* required to provide any academic adjustments that would lower academic standards, fundamentally alter the nature of the program, or impose an undue burden on the college.

Note: The Disability Compliance Officer (DCO) does not determine what accommodations the student is entitled to under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. Rather, the DCO reviews documentation submitted by the student. This documentation, provided by an outside evaluator, includes the credentials of the evaluator, a diagnostic statement identifying the disability, a description of the diagnostic methodology used, a description of the current functional limitations, a description of the expected progression or stability of the disability, a description of current and past accommodations, services and/or medications, and finally, recommendations for accommodations. It is by reviewing this documentation that the DCO determines the accommodations to which the student is entitled.

When a professor sees a student struggling academically and suspects a disability, the natural instinct may be to provide an accommodation without consulting the DCO. This could put the institution at legal risk and put other students at a disadvantage.

Please read through this guide and direct questions about disability compliance to the DCO so that accommodation needs are met in a fair and consistent manner.

Throughout this document, Disability Compliance Office (DCO) and Disability Resource Office (DRO) are used interchangeably.

The Law

American with Disabilities Act

The ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation and telecommunications.

To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one of ore major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

Americans with Disabilities Act: Title II

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Rehabilitation Act of 1973: Section 504

No otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. For the purposes of this section, the term "program or activity" means all of the operations of - (2)(A) a college, university, or other post-secondary institution, or a public system of higher education.

Americans with Disabilities Act: Amendments Act

The **ADA Amendments Act of 2008** (Public Law 110-325, ADAAA) became effective January 1, 2009. The ADAAA expands interpretation of the ADA's coverage, which has been narrowly construed by case law in a number of decisions by the Supreme Court. Because Congress viewed those decisions as limiting the rights of persons with disabilities, the ADAAA explicitly reversed those decisions. It also rejected portions of the regulations published by the Equal Employment Opportunity Commission (EEOC) that interpret Title I (the employment-related title) of the ADA. The ADAAA makes changes to the definition of the term "disability," clarifying and broadening that definition -- and therefore the number and types of persons who are protected under the ADA and other Federal disability nondiscrimination laws.

The ADAAA requires that courts interpreting the ADA focus on whether the covered entity has discriminated, rather than whether the individual seeking the law's protection has an impairment that fits within the technical definition of the term "disability." The Act retains the ADA's basic definition of "disability" as: 1. an impairment that substantially limits one or more major life activities; 2. a record of such an impairment; or 3. being regarded as having such an impairment. However, it changes the way that the statutory terms should be interpreted.

The ADAAA renews Congress' commitment to ensuring that all Americans with disabilities are able to participate to the fullest possible extent in all facets of society. By broadening the definition of disability in the ADA, the ADAAA provides protection for persons previously excluded by Supreme Court cases. Future cases under the ADA will focus less on the threshold question of whether a person is disabled, and will focus more on whether discrimination occurred, including whether an accommodation or modification was unjustly denied.

Disability Compliance Office

Policies and Procedures

Massachusetts Maritime Academy is committed to providing reasonable accommodations for students with documented disabilities. The DCO works in collaboration with the faculty and other campus departments to provide support for students with disabilities. This coordination of efforts complies with the mandates of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

At the post-secondary school level, a student must disclose his learning differences in order to receive reasonable academic accommodations. The Voluntary Disclosure of Disability Form (Form 101) is available in the Disability Compliance Office or for ready download on the MMA website.

Once the disclosure form is completed, a student must submit documentation from a qualified professional stating the nature of the disability and its impact on the student's learning in the college environment. This evaluation documentation must be completed within three years of enrollment to Massachusetts Maritime Academy. An Individualized Education Plan (I.E.P.) without underlying assessment documentation is not acceptable. The specific documentation criteria required is also available for download on the MMA website.

Once documentation is received and reviewed by the DCO, a support services plan is developed with the student. Depending upon the nature of the disability, students may be eligible for one or more of the following accommodations:

- Extended time for quizzes and tests (not to exceed time and one half)
- Preferential seating
- Reduced distraction room for testing
- Priority registration
- Note taker
- Word processor use
- Use of tape recorder for lectures
- Textbooks on tape

Reasonable accommodations will be arranged for a student provided the accommodation does not substantially alter the fundamental nature of the academic class or program.

Intake Meeting

After a student has been admitted to MMA and the proper documentation has been submitted, an intake meeting with the student and the DCO will be arranged. Preferably this will occur during the late spring or early summer before enrollment at MMA. Arrangements for an intake meeting with students who travel a great distance will be made during orientation. An intake meeting will consider the learning styles of the student and a mutual agreement plan will be developed as to how best to accommodate those differences during the academic year.

Forms Process

During the first two weeks of class, a student should visit the DCO to pick up the green Faculty Agreement Accommodation forms (Form 105) that will require signatures by the student's professors. The forms contain a menu of accommodations. The specific accommodation needed by the named student will be indicated by a

bold **X** next to it along with an asterisk for any additional comments or suggestions (e.g. Writing Center or LRC appointments) that will help the professor support the student's learning style. At the bottom of the form, there are spaces for signatures: the professor's, the student's and the DCO's. The student should present the accommodation form to each of his/her professors. Ideally, this should be presented during a meeting in the professor's office so that a thoughtful and private discussion on how best the professor might accommodate the student's learning style can be addressed. If agreeable to the stated accommodation, the professor will sign the form, as will the student. Once the professor signs the agreement, (s)he should make a notation on his/her roster indicating that the named student is entitled to accommodations. Once signed, the particular accommodations will be left up to the discretion of the professor to arrange with the student.

The signed form is returned by the student to the DCO where the signed copy is maintained in the files. When forms are returned, the DCO will send an e-copy of the form to the professor so that the professor can maintain an electronic file of the accommodations for each class. The professor may also elect to make a copy for his academic files. With proper documentation, students are entitled to accommodations at any point during the semester. However, for students' academic success since accommodations are not required to be given until the professor has been notified, these procedures are strongly encouraged during the first two weeks of class.

Once the professor has signed an accommodation form, a student's responsibility does not end. Because classes are so tightly scheduled and space is limited, a student must notify a professor in advance of any test or quiz for which (s)he will require a separate, reduced-distraction room. This is in order that room arrangements may be made ahead of time, if needed. For scheduled quizzes and exams, a professor should be notified one to two class periods beforehand, if possible. For a final exam, a professor should be notified a week in advance. Failure to give adequate notice to professors of the need for separate exam room accommodations may result in those accommodations not being provided.

Mid-semester Accommodation

Occasionally, a student may not want to disclose a known disability, expecting that (s)he will succeed without academic accommodations. When the academic workload, coupled with Regimental responsibilities, becomes overwhelming, a student at mid-semester may suddenly realize (s)he needs help. Provided that this disclosure and documentation submission is timely (timely is not considered to be the day of an exam), the same initial forms procedure is to be followed: documentation submission, intake meeting, form agreement signed by professors, and forms returned to the DCO.

As the semester progresses, a previously undiagnosed student may feel that the MMA workload is unusually difficult and that (s)he may have a latent learning disability. A professor may also refer a student at mid-semester to the DCO if a student's classroom performance reveals the possibility of a learning disability. A discussion with the student and his professors to determine the extent of the academic issues will be made. If testing is recommended, the DCO has a list of nearby professionals available for learning disability assessment. A student may also choose to be tested elsewhere. Once an appointment is made, a student may receive Faculty Agreement Pending Testing forms (Form 106) to be given to professors. This form requests extra time on upcoming tests pending the outcome of an evaluation by a professional. This is a short, interim accommodation, is infrequently granted, and its duration is no longer than four to six weeks during a semester.

Appeal Process

There are times when a professor is not in agreement with a student's accommodation. A discussion between the student and the particular professor about the reasons for denial and any suggested alternatives should take place. If the matter is resolved satisfactorily between student and professor, the DCO will have no further involvement. A professor should note in writing on Form 105 why (s)he is not agreeable to the

accommodation, what alternative, if any, will be made, and the professor should have the student initial it. This written explanation is necessary and is required by the Office of Civil Rights. A signed and dated written record may protect against potential personal and institutional liability at a later date.

Case law supports a professor's denial of an accommodation if the essential nature of the academic class or program is altered by it. However, any denial or alternative adjustment must be supported with a written statement. If no explanation is given, if a student is not in agreement, or if the denial appears arbitrary and an essential nature of the class is not compromised, the DCO will mediate the accommodations issue. If that discussion cannot reach a mutual resolution, a meeting with the Academic Dean and the Department Chair will be arranged to fully vet the issue. Since arbitrary denials of accommodations can violate civil rights afforded to disabled students under the ADA and Section 504 of the Rehabilitation Act, and can predispose parties to personal and institutional liability, a final determination by MMA legal counsel (Form 107) will be made, if necessary.

Employee and Student ADA Claims

Employees and students who have a disability or who suffer from a temporary disability may be eligible to receive reasonable accommodations in their work and study environment at MMA. The DCO works interactively with all campus departments to ensure compliance under the Americans with Disabilities Act. Forms requesting such accommodations are available in the Disability Compliance Office and in the Human Resources Office. When a request is made to the DCO, submission of supporting medical documentation may be necessary. Depending upon the particular nature and duration of the disability, periodic medical documentation and/or an independent evaluation may be required.

Division of Graduate and Continuing Education

Each student enrolled in coursework at MMA has the right to reasonable accommodations according to his/her disability, regardless of the delivery system. Students enrolled through the Division of Graduate and Continuing Education follow the same procedures described above. A "Voluntary Disclosure Form" is submitted to the DCO. The student must also submit documentation from a qualified professional stating the nature of the disability and its impact on the student's learning in the college environment. Once documentation is received and reviewed by the DCO, a support services plan is developed. An accommodation form will then be completed for the student to present to his/her instructors. Students enrolled in DGCE courses have the same rights and responsibilities as all other students at MMA.

Documentation Requirements

Massachusetts Maritime Academy is committed to providing reasonable accommodations for students with documented disabilities. The ADA defines a disability as a physical or mental impairment that substantially limits one or more life functions.

Disability documentation for the purpose of providing accommodations must accomplish two goals so that effective accommodations can be identified:

- establish the disability, and
- provide adequate information on the functional impact of the disability.

To that end, the following criteria for outside evaluation has been established for providing documentation to MMA.

Documentation of the disability must have been **completed within three years of the date of enrollment**. An I.E.P. or 504 Plan is **NOT** sufficient documentation and does **NOT** carry over to the college level. Accommodations cannot be provided until complete documentation has been received by the Disability Resource Office (DRO).

The DRO provides services to students with disabilities, working with each individually. Students with learning disabilities must establish eligibility for services and/or reasonable accommodations by providing disability documentation from a professional licensed or certified to diagnose and treat their disability.

Learning Disabilities

Disability documentation for students with **Learning Disabilities** must be provided by one of the following:

- Licensed psychologist
- Licensed neuropsychologist

Such documentation should be the result of comprehensive adult-level testing completed no earlier than the student's 10th or 11th grade of high school.

Documentation must include the following:

- Diagnosis and DSM code
- History
- Observations
- Comprehensive standardized adult IQ test, recommended, the WAIS –III, with results and interpretation of all sub-tests included
- Comprehensive test of achievement, recommended, the Woodcock-Johnson, with results and interpretation of all sub-tests included.
- Conclusions
- Summary
- Recommendation of accommodations

Additional evaluations are the professional call of the diagnostician, and will help insure the credibility of the eligibility criteria, as well as providing our staff with valuable insight into the student's disability-related accommodation requests and abilities.

The evaluator MUST include specific recommendations that address the specific learning disability. (The recommendations usually appear on the last page of the testing results. Please be sure they are included.)

Attention Deficit Disorder (ADD) or Attention Deficit Hyperactivity Disorder (ADHD)

Students with ADD or ADHD must establish eligibility for services and/or reasonable accommodations by providing disability documentation from a professional licensed or certified to diagnose and treat their disability.

Disability documentation for students with ADD or ADHD must be provided by one of the following:

- Licensed psychologist
- Licensed neuropsychologist

Such documentation should be the result of a comprehensive adult-level testing completed no earlier than the student's 10th or 11th grade of high school.

Documentation must include the following:

- Diagnosis and DSM code
- History
- Observations
- Comprehensive standardized adult IQ test, recommended, the WAIS-III, with results and interpretation of all sub-tests included
- Comprehensive test of achievement, recommended, the Woodcock-Johnson, with results and interpretation of all sub-tests included.
- Comprehensive attentional assessments such as the TOVA (Test of Variable Attention), PASAT (paced auditory serial test), Trail Making Tests (parts A & B) of the Halstead-Reitan, are recommended.
- Conclusions
- Summary
- Recommendation of accommodations

Additional evaluations are the professional call of the diagnostician, and will help insure the credibility of the eligibility criteria, as well as providing our staff with valuable insight into the student's disability-related accommodation requests and abilities.

The evaluator MUST include specific recommendations that address the specific learning disability. (The recommendations usually appear on the last page of the testing results. Please be sure they are included.)

Mail:
 Dr. F. Tishkevich
 Disability Resource Officer
 Massachusetts Maritime Academy
 101 Academy Dr.
 Buzzards Bay, MA 02532

E-mail: ftishkevich@maritime.edu
 FAX: (508) 830-6401

Psychological, Medical or Physical Disabilities

Request for reasonable accommodations, auxiliary aids and academic adjustments on the basis of a psychological, medical or physical disability that substantially limits one or more major life activities which might include but are not limited to: learning, concentrating, seeing, hearing, speaking, walking, breathing, sleeping and/or working must meet the following guidelines.

Comprehensive and detailed information documenting a psychological, medical or physical disability and the need for services must be certified by a licensed physician, psychologist, psychiatrist, social worker, neurologist, speech pathologist or other appropriate professional. Massachusetts Maritime Academy reserves the right to determine the nature and extent of reasonable accommodations, thus additional documentation may be requested to assist in identifying appropriate reasonable accommodations

Documentation should include:

- A clear diagnostic statement including a description of the duration and severity of condition and the current impact of (or limitation imposed by) the disability within the college setting.
- A statement regarding treatments or services used to minimize the impact of a disabling condition.
- Currently prescribed medications if the side effects of such medications create barriers to learning.
- Recommendations for accommodations that is reasonable and validated by current documentation.
- The name, title, address and phone number of certifying professional(s) including date of diagnosis and/or evaluation.
- Test results of auditory functioning or impairment and aids used (hearing aids, FM systems, cochlear implants, etc.)
- Visual acuity and aids used

The evaluator MUST include specific recommendations that address the specific disability. (The recommendations usually appear on the last page of the testing results. Please be sure they are included.)

Documentation may be submitted to MMA by:

Mail: Health Services
Massachusetts Maritime Academy
101 Academy Dr.
Buzzards Bay, MA 02532

Information Release Authorization Form

Students who have reached age 18, or who are enrolled in post-secondary education, must personally authorize the release of medical and/or educational records to MMA. To assist in that process, the following “Information Release Authorization” may be printed and submitted to a school, agency and/or medical provider, to authorize the release of information necessary to provide evidence of a documented learning disability.

Information Release Authorization



I, _____, _____
Name **Social Security #**

_____, authorize _____
Birth date **Hospital, clinic, school, or agency**

or its director, designee, or records department, to release the information contained in my records to the individual or organization listed below:

1. Name or title of person or organization to whom disclosure is to be made:

Dr. F. Tishkevich
Director Disability Compliance Office
Massachusetts Maritime Academy
101 Academy Drive
Buzzards Bay, MA 02532

2. Specific type of information to be disclosed:

_____ Psychological, vocational interest, and aptitude test.
_____ Medical records of treatment for physical and/or emotional illness
including treatment records for substance abuse.

3. The purpose and need for such disclosure:

_____ Establish eligibility for academic accommodations.
_____ Develop a vocational plan for student.
_____ Other (please specify).

Signature

Date

Grievance Procedure

A professor is entitled to deny a particular accommodation if the accommodation:

- fundamentally alters a requirement of a course or program
- results in an undue financial or administrative hardship for *the institution*
- is not actually an accommodation, but rather a personal service

However, meticulous record keeping is required to protect against potential personal and institutional liability at a later date.

1. The professor should note, in writing, on the green accommodation form (Form 105) why (s)he is not agreeable to the accommodation and what alternatives, if any, will be made.
2. The professor and student should discuss the reason for denial and the suggested alternatives.
3. If the student and professor agree, the student should initial the green accommodation form with the suggested alternatives. No further action is required.
4. If no explanation is given, or if the student is not in agreement, or if the denial appears arbitrary, the DCO will mediate the accommodation issue.
5. If no mutual resolution can be reached, a meeting with the Academic Dean and Department Chair will be arranged to fully discuss the issue.
6. Arbitrary denials of accommodations can violate civil rights afforded to disabled students under the ADA and Section 504 of the Rehabilitation Act and can predispose parties to personal and institutional liability. As a result, a final determination by MMA legal counsel (form attached at the end of this section) will be made, if necessary.

Faculty Accommodation Denial – Legal Counsel Resolution

The following “Faculty Accommodation Denial – Legal Counsel Resolution” form (Form 107) is used when discussion cannot reach a mutual resolution of a professor’s denial of an accommodation.

Faculty Accommodation Denial – Legal Counsel Resolution

Disability Compliance Office
Dr. F. M. Tishkevich
(508) 830-5000 x 2208

Date

Student Name

Course

Professor

The above named student has a documented disability on file in the Disability Compliance Office. (S)he is entitled to the following accommodations:

Exams

- Extended time (exams, quizzes, labs) not to exceed time and one-half
- Reduced distraction room
- Computer use
- Reader Scribe
- Alternative test format

Classroom

- Evaluation of in-class assignments and exams to exclude spelling
- Use of tape recorder in the classroom
- Use of textbooks and other reading materials on tape
- Note takers
- Front row/preferential seating
- Other

The accommodation for above named student is denied for the following reason:

After discussion with the parties involved and a careful review of the issues presented, my recommendation is the following:

MMA Legal Counsel

Academic Dean

Department Chair

Director Disability Compliance

Student

DCO Form 107

Formal Complaint Procedures

The Mass Maritime Office of Affirmative Action is responsible for the resolution of grievances arising under Title II of the Americans with Disabilities Act. While the college encourages the immediate resolution of issues through the procedures outlined above, parties may also access a formal grievance procedure.

The Office of Affirmative Action and the ADA Compliance Officer are responsible for providing advice and assistance to individuals who believe they have been discriminated against on the basis of disability. An individual may choose to take action as follows:

1. Request an informal investigation and mediation process. This process may be used with or without the use of the complainants' name. If the complainant is not satisfied with the conclusions reached in the informal investigation and mediation process, a formal complaint may be filed at a later date.
2. Request a formal investigation and hearing process. This option may be used with the complainant's permission to use his/her name.
3. File a charge directly with the local, state or federal agency having jurisdiction. This option may be used separately or in conjunction with the informal or formal investigation process. These agencies include:

U.S. Office of Education/Office of Civil Rights
Room 222, McCormack Post Office and Court House Building
Boston, MA 02109

U.S. Equal Employment Opportunity Commission
1 Congress Street, 10th Floor
Boston, MA 02114

Massachusetts Commission Against Discrimination
One Ashburnton Place
Boston, MA 02108

Rights and Responsibilities

Faculty

Rights

It is the faculty member's right to:

- determine course content and general methods of teaching
- ensure that course standards are not lowered or compromised
- ensure that a student has demonstrated mastery of the essential course requirements in order to obtain an appropriate grade
- fail any student if he/she does not demonstrate mastery of essential course requirements
- request a written agreement before allowing the students to tape record a class
- expect *all* students to adhere to the college code of conduct, regardless of whether they have a disability
- challenge an accommodation request if he/she believes the accommodation would result in a fundamental alteration of the program, the institution is being asked to address a personal need, or the accommodation would impose an undue financial or administrative burden

Responsibilities

As an employee of MMA, which has compliance obligations under federal laws, faculty have a shared responsibility in providing reasonable academic accommodations for students with disabilities. It is the faculty member's responsibility to:

- provide the accommodations listed on the student's accommodation form unless the student has agreed otherwise
- contact the DCO if there is a question or concern about the accommodations and how they will be provided
- respect a student's right not to request or use accommodations
- direct student questions about disability accommodations to the Disability Resource Office
- provide a "Reasonable Accommodation" statement on each course syllabus. Please include a statement similar to the one below:

"Massachusetts Maritime Academy is committed to providing reasonable accommodations to students with documented disabilities. Students who believe they may need accommodations in this class are required to contact Dr. F. Tishkevich, DCO, within the first two weeks of class. ftishkevich@maritime.edu, x 2208."

Students

Rights

Each student has the right to:

- confidentiality of all information related to his/her disability
- equal access to courses, programs, services, jobs, activities, and facilities available through the college
- reasonable accommodations according to his/her disability
- self-disclose and to seek accommodations
- decline accommodations
- contact the DCO to discuss learning difficulties, academic accommodations and the accommodation process at MMA

Responsibilities

Each student is responsible for:

- contacting the DCO for an appointment
- submitting documentation that meets MMA guidelines
- discussing academic accommodations with the DCO
- picking up academic accommodation forms EACH semester
- self-disclosing to each instructor and ensuring that each instructor has signed the accommodation form, EACH semester
- returning the signed accommodation form to the DCO EACH semester
- working with each instructor to arrange to receive the academic accommodations indicated on the accommodation form

Students registered with the Disability Compliance Office who require academic accommodations must request their green forms (form 105) from the DCO within the first two weeks of each semester. The form is presented to professors who agree to the accommodation, sign the form, and return it to the student. The professor may make a copy if (s)he wishes, but the signed original is returned to the DCO. An email copy will be sent to both student and professors. That is the only “copy” student and professor will receive. The original remains in my files. Accommodations for Sea Term will already be in place and forms will be available from a designated person on board the ship.

By law, the DCO may not disclose the nature of a student’s disability. However, to enhance the learning environment, and to cultivate a supportive professor-student relationship, it is strongly encouraged that

students meet with their professors to discuss their learning style and to see how the professor may help to accommodate their learning difference.

When an exam is scheduled, students must notify the professor of their special exam accommodations so that the professor can make timely arrangements.

- for a scheduled quiz, notify the professor *at least* three (3) days before the quiz
- for a scheduled exam/mid-term, notify the professor *at least* seven (7) days before the exam
- for a final exam, notify the professor *at least* a week to ten days (7 – 10 days) before the exam

Massachusetts Maritime Academy is committed to providing reasonable accommodations for students with documented disabilities. However, if a requested accommodation fundamentally alters the nature of a particular class or program, the professor does not have to agree to the accommodation. A dialogue between student, professor, and the DO can ensure a reasonable accommodation alternative in the event of a denial.

Qualified Status

The student has a continuing obligation to be qualified. The protections provided by the law are to ensure that he/she has the same opportunities as nondisabled individuals to compete and/or participate.

The law does not insulate nor shield the student from the obligation to demonstrate entitlement to those opportunities nor is it intended to permit them “to obtain an advantage over nondisabled peers.” (See *Long v. Howard University (2006)*)

Two important aspects of the law are:

1. Educational institutions are not required to either “lower academic standards” or “fundamentally alter” programs or services to accommodate students with disabilities.
2. The student with disabilities must “meet essential standards required for participation in order to remain qualified, regardless of whether the failure to meet the requirements is due to disability.” (See *Long v. Howard University, supra*; and *University of Texas Medical Branch, 30NDLR 154, March 2005* (Disability and Higher Education: Guidance for Section 504 and ADA Compliance, p 1:5))

Accommodation Differences: K-12 versus College

As a student transitions to the college level, they need to be aware that the accommodation process changes when they go from secondary to post-secondary education. However, many high school special educators and guidance counselors are unaware of the difference in laws ruling K-12 versus post-secondary education. The “transition planning” referred to in a student’s high school Individualized Education Program is almost nonexistent. Meanwhile, students and parents do not seek out information about the difference, because they are unaware that they exist. Faculty are encouraged to refer students to the DCO if there seems to be confusion about accommodations provided at MMA.

Accommodations that students receive in high school may not be applicable in college. In fact, colleges are not obligated to provide the same services received in high school. For example, coaching and organizational support are not services that are available at MMA. The table below may be instructive in clarifying some of the differences between services in high school and services in college.

High School

College

Laws: IDEA & Section 504	Laws: Section 504 & ADA
<p>Responsibility:</p> <p>School district identifies, evaluates and plans educational interventions in attempt to facilitate student success</p>	<p>Responsibility:</p> <p>Students must self-identify, provide their documentation, and request disability services to facilitate access</p>
<p>Parental Rights:</p> <p>Parents/Guardians are involved and must approve plan for students under 18</p>	<p>Parental Rights:</p> <p>Students 18 and over are their own advocates; parents are not involved; FERPA applies, mandating non-disclosure to parents</p>
<p>Services:</p> <p>School may provide academic and non-academic services</p>	<p>Services:</p> <p>Students are provided access to any service, program or activity sponsored by the institution. Services of a personal nature (personal care, personal attendants, academic coaches, readers, typists, etc. for out of class work) are the responsibility of the student</p>
<p>Accommodations:</p> <p>Educational programs, student outcomes, class requirements, etc. may be modified to facilitate student success</p>	<p>Accommodations:</p> <p>Reasonable accommodations are provided, based on student request, to facilitate access; success is the responsibility of the student and the fundamental nature and outcomes of classes are not modified</p>
<p>Plans:</p> <p>IEPs and 504 Plans are provided</p>	<p>Plans:</p> <p>Accommodation sheets are developed each semester. It is the responsibility of the student to request the sheets, to deliver them to their instructors and to discuss with the instructor the requested accommodations</p>
<p>Confidentiality:</p> <p>The school district shares student plans with school personnel as deemed appropriate</p>	<p>Confidentiality:</p> <p>The student is in charge of his/her disability information and disclosure is made only at the request of the student or on a need to know basis</p>
<p>Intent:</p> <p>Legal mandate with aim to foster success</p>	<p>Intent:</p> <p>Civil rights, non-discrimination to foster access</p>

Recent Legal Decision

Letter to: Western Illinois University, No. 05-06-2039 (107 LRP 2640) (OCR 2006)

Summary: The OCR closed a disability discrimination complaint against WIU after the university entered into an agreement with the student resolving his allegations. In his complaint, the student alleged that he was subjected to discrimination based on his disability when his professor denied his request for academic adjustments.

WIU entered into an agreement with the student. WIU promised to provide the professor with training by a qualified professional on implementing the requirements of Section 504 of the Rehabilitation Act and Title II of the ADA, especially with regard to providing academic adjustments and auxiliary aids to students with documented disabilities.

The agreement stated that specific information on how to respond to a student's request for academic adjustments would be included in the training. WIU agreed to inform the student when training had been completed. WIU also promised to encourage faculty to attend WIU's Disability Awareness Fair. Finally, WIU agreed to reimburse the student \$150 for fee expenses he incurred after registering for the course.

Since OCR was not a party to the agreement, it would not monitor its implementation. Rather it would evaluate the new allegations of discriminations to determine the appropriateness of further efforts by the office. (Disability Compliance for Higher Education, 2008 Year Book, p 3-8).

Confidentiality

Family Educational Rights and Privacy Act

Despite common perception to the contrary, there is no right to absolute confidentiality under FERPA. Faculty are encouraged to contact the DCO with questions or for clarification.

“Education records” are protected under FERPA. To clarify, *education records* are:

- made, maintained or used only in connection with treatment of the student; and
- disclosed only to individuals providing the treatment. For purposes of this definition, “treatment” does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution.

The FERPA (20 U.S.C. § 1232g; 34 CFR Part 99) protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their child's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

Although the law does say that the parents' rights afforded by FERPA transfer to the "eligible student," FERPA clearly provides ways in which an institution can share education records on the student with his or her parents. To assist this process, the FERPA Student Release Form following this section may be printed and signed by the student.

Student rights under FERPA:

- to inspect and review the student's education records maintained by the school
- to request that a school correct records which they believe to be inaccurate or misleading
- schools must have written permission from the eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.

For additional information call 1-800-USA-LEARN (1-800-872-5327) (voice). Individuals who use TDD may call 1-800-437-0833.

Or contact:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520

FERPA Release Form

Students who have reached age 18, or who are enrolled in post-secondary education, must personally authorize the release of educational records. This includes releasing information to parents/guardians. To assist in that process, the following “FERPA Student Release” may be printed, signed by the student, and submitted to the DCO at MMA to authorize the release of information to parents/guardians.

FERPA STUDENT RELEASE



Massachusetts Maritime Academy
Disability Compliance Office
Dr. F. Tishkevich
(508) 830-5000 x 2208

The Family Educational Rights and Privacy Act (FERPA) grants privacy of non-directory information contained in student records, to all students attending a post-secondary institution. Records pertaining to disability documentation and accommodations requested and received are considered non-directory information at Massachusetts Maritime Academy and are covered under FERPA regulations.

From time to time, parents/guardians of students with learning differences feel compelled to call the Disability Compliance Office to check on the progress of a student or to make sure the requested accommodations are in place. Since FERPA regulations extend to students and not to parents/guardians, your permission is needed for this office to speak with your parents/guardians. Your signature on this release gives the Disability Compliance Director this permission.

“Dr. F. Tishkevich, Disability Compliance Officer at Massachusetts Maritime Academy, has my permission to speak with my parents/guardians regarding my documentation, the accommodations process, and any related issues.”

Student (print)

Date

Student (signature)

Testing

Testing

Both the Americans with Disabilities Act and Section 504 of the Rehabilitation Act require that tests be administered in a manner that does not unlawfully discriminate against individuals based on disability. Under the ADA and Section 504, accommodations are designed to neutralize the effects of the individual's disability.

Common accommodations for students are extended time for testing, not to exceed time and one half, or distraction-free testing. Testing is an integral part of course instruction. As such, instructors are encouraged to arrange testing accommodations during the academic day, at a time and place where they would be available to the student. This will allow the student access to the instructor to answer questions, provide clarification, etc.

Both extended time and distraction-free testing are disability-based clinical judgments that demand the knowledge of a clinician with expertise in that area. Appropriate testing accommodations are determined based on a student's disability and individual needs. However, an institution is not required to provide any academic adjustments that would lower academic standards, fundamentally alter the nature of the program, or impose an undue burden on the college.

Recent Legal Decisions

Letter to: George Mason University, No. 11-06-2077 (107 LRP 28416)(OCR 2007)

Summary: The student alleged that she was discriminated against on the basis of her disability by being penalized for utilizing testing accommodations. The student's accommodations included "extended time and a half on exams." Specifically, she claimed that she took the second test in a course during a special testing period and was not provided the same access to the instructor as students who took the test in the classroom at the regularly scheduled time.

The student asserted that during the in-class portion of the second exam, she was denied the same access to the professor as students who took the exam in the classroom at the regularly scheduled time. The OCR stated that "Given the passage of time and the somewhat conflicting recollections of both the [student] and the professor, it is not entirely clear what access [she] had to the professor during the entire in-class portion of the exam that she took in the conference room."

The OCR found no indication that the professor scheduled the student's exam at a time when he would be unavailable. In addition, the student admitted that she did not object to the time he scheduled the test. OCR observed that at the least, she would have had access to the professor once the regularly scheduled exam had started.

(Disability Compliance for Higher Education, 2008 Year Book, p 3-7).

Letter to: Bridgewater State College, No. 01-05-2058 (106 LRP 24203)(OCR 2005)

Summary: Once a student has provided appropriate documentation of a disability and followed the appropriate procedures for requesting accommodations, the college must then ensure that those accommodations are made available to the student.

The student complained to OCR that the college discriminated against him on the basis of his disability when it did not give him the accommodations he had requested for his senior seminar midterm. The student acknowledged that for the most part he received appropriate accommodations for his examinations. However, the testing accommodations broke down on occasion.

The college agreed that he did not get the accommodations he should have for his senior seminar midterm. It explained that his professor became ill unexpectedly and the college didn't make alternative arrangements for him to take the exam with the appropriate accommodations.

The OCR stated that "While the failure to provide accommodations was understandable, given [the professor's] sudden illness, it nonetheless forced [the student] to take an exam under conditions that were not appropriate for him in light of his disability." Accordingly, it concluded that the college was not in compliance with federal disability law.

(Disability Compliance for Higher Education, 2007 Year Book, p 3-6).

Other Disabilities

Section 504 of the Rehabilitation Act of 1973 states:

“No otherwise qualified person with a disability in the United States... shall, solely by reason of... disability, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity receiving Federal financial assistance....”

Understanding Section 504 is imperative, because it is the foundation for all terminology and access that impact students with disabilities at the college or university level.

Under Section 504 a person with a disability is any person who:

- Has a disability or mental impairment which substantially limits one or more major life activities,
- Has a history of such an impairment, or
- Is regarded as having such an impairment.

A qualified person with a disability is defined as one who:

- meets the academic and technical standards requisite to admission or participation in the education program or activity.

Section 504 protects the rights of qualified individuals who have disabilities such as, but not limited to:

Chronic Illness

AIDS

Arthritis

Cancer

Cardiac Disease

Diabetes

Multiple Sclerosis

Muscular Dystrophy

Bi-polar Disorder

Major Depression

Post Traumatic Stress Disorder

Conditions

Blindness/visual Impairment

Cerebral Palsy

Deafness/hearing Impairment

Epilepsy or Seizure Disorder

Specific Learning Disability

Speech and Language Disorder

Spinal Cord Injury

Tourette's Syndrome

Traumatic Brain Injuries

Under the Americans with Disabilities Act:

Disability is legally defined as:

Sec. 12102. Definition of disability

- (1) **DISABILITY.**—The term ‘disability’ means, with respect to an individual—
- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (B) a record of such an impairment; or
 - (C) being regarded as having such an impairment (as described in paragraph (3)).
- (2) **MAJOR LIFE ACTIVITIES.**—
- (A) **IN GENERAL.**—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
 - (B) **MAJOR BODILY FUNCTIONS.**—For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- (3) **REGARDED AS HAVING SUCH AN IMPAIRMENT.**—For purposes of paragraph (1)(C):
- (A) An individual meets the requirement of ‘being regarded as having such an impairment’ if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
 - (B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.
- (4) **RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY.**—The definition of ‘disability’ in paragraph (1) shall be construed in accordance with the following:
- (A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.
 - (B) The term ‘substantially limits’ shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.
 - (C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
 - (D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
 - (E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—
 - (I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
 - (II) use of assistive technology;
 - (III) reasonable accommodations or auxiliary aids or services; or
 - (IV) learned behavioral or adaptive neurological modifications.
 - (ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.
 - (iii) As used in this subparagraph—
 - (I) the term ‘ordinary eyeglasses or contact lenses’ means lenses that are intended to fully correct visual acuity or eliminate refractive error; and
 - (II) the term ‘low-vision devices’ means devices that magnify, enhance, or otherwise augment a visual image.

(Pub. L. 101-336, Sec. 3, July 26, 1990, 104 Stat. 329; Pub. L. 110-325, Sept. 25, 2008, 122 Stat. 3555.)