What is a Disability?

- A disability is described as a mental or physical impairment that substantially limits one or more major life activities including:
  - Walking
  - Seeing
  - Hearing
  - Speaking
  - Breathing
  - Learning
  - Working
  - Caring for oneself
  - Performing manual tasks
  - Other medical conditions – spinal cord injury, traumatic brain injury, Tourett’s syndrome, epilepsy, cerebral palsy, autism spectrum disorders, AIDS, diabetes, cancer, psychiatric disorders, multiple sclerosis, etc...

K. Yerby, 2014
THE LAW!

Section 504 of the Rehabilitation Act of 1973

Americans with Disabilities Act of 1990

NC Senate Bill 866

ADA Amendment Act of 2008

Higher Education Opportunities Act

Dear Colleague Letter, June 29, 2010 & FAQs

K. Yerby, 2014
Section 504 of the Rehabilitation Act of 1973

- First civil rights statute designed to prevent discrimination against people with disabilities.
- Forbids discrimination against people with disabilities by programs and activities receiving federal funds.
Americans with Disabilities Act, 1990

- ADA requires that people with disabilities not be excluded from participation, be denied benefits, or be subjected to discrimination.
- Does not require the institution to receive federal financial assistance.
- Provides clear enforceable standards addressing discrimination against individuals with disabilities by ensuring the federal government plays a significant role.

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Implications of 504 & ADA

- Those who have qualified for admissions have a right to be in higher education.
- Once admitted, students have a right to access academic and nonacademic programs.
- Qualified students are eligible to receive reasonable academic accommodations that relate to their disabilities.
- Students have a right to confidentiality of all disability information.
- Guarantees ACCESS - NOT success!
Guarantees the right to persons with disabilities in accessing electronic information, including web sites, computers in public libraries, etc. This bill requires compliance by municipalities, counties, community colleges, universities and any agencies in state government.
Senate Bill S. 3406 broadens coverage of the ADA and Section 504 of the Rehabilitation Act in four key areas.

- **Definition of “disability”** – gives broader coverage and includes episodic and remission impairments
- **Major life activities** – includes learning, thinking, concentrating, bodily functions, etc...
- **Mitigating circumstances** – can’t consider auxiliary aids, learned behavior, assistive devices, etc...
- **Individuals regarded as disabled** – does not have to limit or be perceived to limit a major life activity.
Higher Education Opportunities Act, 2010

Financial Assistance for Students with Intellectual Disabilities

- Allows for students with intellectual disabilities (ID) to be eligible for Pell Grants, SEOG, and Federal Work-Study
- Prior to HEOA students were usually not eligible because they did not meet the criteria – lacked high school diploma/GED, didn’t meet “ability to benefit”
- HEOA gives Secretary of Education authority to waive any requirements for Pell, SEOG, FWS, or institutional eligibility
Departments of Justice and Education sent DCL jointly to college and university presidents concerning electronic book readers.

“Requiring use of an emerging technology in a classroom environment when the technology is inaccessible to an entire population of individuals with disabilities - individuals with visual disabilities - is discrimination prohibited by the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504) unless those individuals are provided accommodations or modifications that permit them to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.”

“It is unacceptable for universities to use emerging technology without insisting that this technology be accessible to all students.”
Question 6. Does the DCL apply beyond electronic book readers to other forms of emerging technology?

Yes. The core principles underlying the DCL — equal opportunity, equal treatment, and the obligation to make modifications to avoid disability-based discrimination — are part of the general nondiscrimination requirements of Section 504 and the ADA. Therefore, all school programs or activities — whether in a “brick and mortar,” online, or other “virtual” context — must be operated in a manner that complies with Federal disability discrimination laws.
Question 7. Does the DCL apply to online courses and other online content, such as online applications for admission, class assignments, and housing?

Yes. The principles in the DCL apply to online programs that are part of the operations of the school.
Purpose:

- Establish the disability
- Provide understanding on the impact of the disability
- Assist in making informed decisions about accommodations
Acceptable sources of documentation for substantiating a student’s disability and request for particular accommodations can take a variety of forms:

- **Student’s Self-Report** – interview, questionnaire
- **Observation and Interpretation** – impressions and conclusions formed by disability services personnel
- **Information from External and Third Parties** – educational, medical records/reports
The amount and type of documentation will depend on the individual situation.

Colleges should apply a **consistent process** for documentation instead of requiring identical information.

Documentation should be **relevant and show current functional impact** of the disability.

Should illustrate a **connection** between the impact of the disability, the described barrier, and the requested accommodation.

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Accommodations

Purpose...

- is not to improve chances of being successful, but rather to assure equal access to the opportunity, allowing the student to show whether he/she can be successful

- Guarantees access, not success.

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Colleges must look at each individual disability and the functional impact of the disability for each student. (case-by-case and class-by-class)

Colleges must provide reasonable accommodations to ensure equal access.
Accommodations

The process of making accommodations should...

- follow institutional policies and procedures
- involve personnel from the Disability Services Office
- give primary consideration to the student’s request
- include communication with faculty
- assure the accommodation is reasonable.
An accommodation is not reasonable if it causes...

- a direct threat to the health and safety to others
- a substantial change in an essential element of the curriculum
- a substantial alteration in the manner in which services are provided
- an undue financial or administrative burden
Accommodations

Examples of reasonable accommodations...

- Extended time for tests
- Smart pens/laptop computers/tablets
- Visual aids/handouts
- Concise oral instructions
- Reading list in advance
- Seating in front row
- Clear black print on white or pale yellow paper
Accommodations

- Advance notice of class scheduling change
- Computer software to enlarge print
- Notetakers
- Closed circuit TV
- Interpreters
- Flexible attendance *(If attendance is an essential requirement of a course or program, a college is under no obligation to waive it as an accommodation)*
- Instructions and demonstrations presented in more than one way

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FACULTY & STAFF RESPONSIBILITIES AND RIGHTS
Responsibilities

- Provide reasonable accommodations for students with documented disabilities.
- Do **not** provide accommodations without communication from Disability Services Office.
- Students with disabilities are covered under FERPA and civil rights laws. College employees should not make any statement or implications that the student is any different from the general student population.
Faculty Rights

- Faculty has a right to request a written agreement before allowing a student to tape record a class.
- Faculty/staff can assume that all students must adhere to the behavior/conduct policy of the college.
- Faculty has the right to challenge an accommodation if he/she feels the student is not qualified.
ACADEMIC FREEDOM & PERSONAL LIABILITY
• Academic Freedom is a right, NOT a legal mandate.

• It should not be presumed that protection of academic integrity supersedes all other considerations.
  
  ○ “The right to protect academic integrity and to assert such right as a defense for denying access to individuals with disabilities belongs to the institution, not individual faculty members.” Salome Heyward (Civil Rights Attorney)
Personal Liability

There have been several judicial decisions in which people who denied services to qualified individuals with disabilities have been held personally liable.

“An individual may be subject to personal liability under ADA....To hold differently would allow individuals with both the authority and the discretion to make decisions based on a discriminatory animus to violate the ADA with a degree of impunity not envisioned by Congress.”

Teaching Tips

DO....

- write key terms or outline on the board or handout
- create study guides
- assign advanced readings before the topic is due
- briefly review the previous lecture
- use visual aids...PowerPoints, charts, diagrams
- give assignments in writing as well as orally
- emphasize important points, main ideas, and key concepts

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Teaching Tips

DO....

- leave time for questions
- allow the use of smart pens
- speak distinctly and at a relaxed rate
- explain technical language and terminology
- administer frequent quizzes to provide feedback
- treat an individual with a disability the same way you would treat anyone - with dignity and respect
- Document complaints, conversations, meetings!!!
Teaching Tips

DON’T….

• turn your back to the class when speaking
• embarrass a student by drawing attention to his/her disability
• assume that certain professions or programs are more suited to persons with disabilities
• assume a student with a disability does not belong in a certain program or cannot perform well in class
• make medical judgments
• feel apprehensive about discussing the student’s needs as they relate to a course or program

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Resources

- http://www.washington.edu/doit/Faculty/
- http://telr.osu.edu/fame/
- http://www.arcc.mnscu.edu/studentservices/disabilities_guide.cfm
- http://www.ahead.org/
- http://www.ed.gov/about/offices/list/ocr/index.html
- http://www.w3.org/WAI/
THANK YOU!

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