

# Accommodations for College Students with Learning and Other Disabilities: What's Reasonable?



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In recent months, a Princeton University student with a diagnosed learning disability sued the institution under the Americans with Disabilities Act (ADA) for its refusal to allow her extended testing time on her mid-term exams. According to published news articles, the student received the accommodation of extended testing time on both the ACT and SAT, and on exams administered during her high school years. As of this printing, the litigation is ongoing. But for educational consultants who are accustomed to working with students who receive the accommodation of extended time in high school, this high profile litigation begs the question, *"How can I help my students navigate college accommodations, and what accommodations are considered reasonable?"*

## Defining "Reasonable"

Under both the Americans with Disabilities Act (as recently amended) and Section 504 of the 1973 Rehabilitation Act, a reasonable accommodation is considered to be a modification or adjustment to a course, program, service, or facility, which ensures that a qualified student with a disability is not excluded, segregated, or otherwise treated differently. This is a far-reaching statement. It can be challenging to dissect and easily misinterpreted. It is important to know that neither the ADA nor Section 504 dictates a prescribed list of reasonable accommodations that must be afforded to students at the college level; rather the two statutes provide a broad description of the necessary actions that institutions must *consider*. Thus in defining "reasonable" in the context of higher education, it is often easier to define what is **not reasonable**.

Case law has dictated that a modification or adjustment is not reasonable if it would 1) fundamentally alter the essential nature of the course, curriculum or program; 2) if it constitutes services of a personal nature (such as private tutoring); 3) if it would result in an undue administrative or financial burden for the institution; and 4) if it would result in posing a direct threat to the health or safety of self or others. Let's look at each one of these issues a bit more closely. For the purpose of this article, I will focus on the first, *fundamental alterations*, much more extensively.

## Fundamental Alterations

Substantial changes to admissions criteria, the way a course or program is delivered, or the way an exam is administered, is not required by colleges and universities if it fundamentally alters what is being taught or measured. The courts have given deference to institutions in determining if a requested accommodation results in a fundamental alteration. For example, an institution may logically determine that mastery of a foreign language is essential for students seeking a degree in international business. Thus, a student with a language-based learning disability who was exempt from a foreign language requirement in high school may well find his/her request for a foreign language waiver denied by a particular degree program. On the other hand, an institution may perceive that foreign language is not essential for a fine arts degree, and as such, a request to waive or substitute an institution's foreign language requirement in such instances may be viewed as reasonable.

There is particular concern as it relates to students studying in allied health and professional programs in which the student's ability to provide safe

and appropriate quality care is being measured. An institution may logically determine that allowing a student with a mixed receptive-expressive learning disability extended testing time to complete an intubation procedure during a performance based clinical exam is a fundamental alteration to the essential skill being measured. However, permitting the same student extended time while completing a pen and paper essay exam on the ethics of euthanasia may be viewed as perfectly reasonable. One could argue that the allowance of extended testing time has no adverse impact on the measurement of the student's ability to write a well-reasoned argument. Said another way, in the essay example it is the demonstrated mastery of the subject matter that is being measured, not how fast the student can write. But as it relates to the clinical exam, one cannot negate the essentialness of being able to complete a medical procedure within a certain time frame. Not doing so can have deadly consequences.

In some instances, the question of reasonableness does not hinge on the essentialness of the course of study (i.e. foreign language) or the skill being measured, but rather on the manner in which the degree program is delivered. Consideration must be given to the intended design of a program or curriculum. In an intensive, fast paced weekend Executive MBA program designed to give students significant experience working cooperatively and actively with classmates (such as on business case studies), a student with a legitimate physical disability unable to attend class regularly and participate in group projects may be denied a request to participate via live streaming media. Why? The nature of the program may be such that face-to-face interaction is necessary to facilitate the learning process at hand. Some in-class activities may simply not be able to be accomplished from afar without changing the intended outcome of the activity.

## Personal Services

For some students with disabilities, including students with learning and other cognitive based disorders, assistance from specialized tutors is perhaps the most prevalent accommodation afforded to students during the K-12 educational experience. However, the courts have long concluded that tutoring is a personal service and thus not required as a reasonable accommodation by colleges and universities. The good news is that some manner of tutoring is typically available on most college campuses, and students with disabilities will have access to existing tutoring services on the same basis as students without disabilities. However, a student with a non-verbal learning disability requesting that the institution provide a private tutor with professional experience teaching students with disabilities may well find his/her request deemed unreasonable. So, too, may a student who requests a university instructor to adapt his/her teaching style to the student's individual learning style. Requests that are of a personal preference in nature and scope are not viewed as reasonable and obligatory by most institutions.

## Undue Burden

My review of case law has uncovered no instance in which the courts have allowed an institution to refuse to provide accommodations solely on the basis of cost. However, my direct experience as a college administrator reflects on those instances in which a request for accommodation was viewed by some

schools of thoughts to be an undue administrative burden. For example, an institution may determine that it is not reasonable to prohibit the classmates and dorm mates of a student with a chemical sensitivity disorder the use of perfumes, deodorants, or hair products while in the student's presence. Administratively, it may be simply impossible to enforce. On the other hand, a school may determine that it is reasonable to grant the request of a student who has a severe peanut allergy to have his/her residence dining hall cease the use of peanut based products in its prepared foods, or at the very least, label all food items containing peanut products. In this example, the problem is isolated to a particular dining hall and as such, the school may very well determine that it is not an administrative burden to do so.

### **Direct Threat**

Although rare, there are instances in which the provision of an accommodation can pose a direct threat to the health or safety of self and others. For example, consider the student with a visual impairment who uses a guide dog to navigate campus. The student is enrolled in a class in which another student has severe allergic reactions to dog hair. The allergic student makes an accommodation request that the student with a visual impairment be removed from the class. Is this reasonable? Is the visually impaired student's accommodation of a guide dog presenting a direct threat to the allergic student? Perhaps. However, the "direct threat" prong may not be used to remove a service animal from a classroom where another student has an allergy to that animal. Instead, the institution may use its regular procedure for identifying an accommodation or modification for both students; perhaps, for example, assigning the students to different sections of the same class

### **So What's the Bottom Line?**

The Princeton University lawsuit, while alarming to some, is not a rare occurrence. The number of college students with all manner of disabilities (psychiatric conditions, disorders on the autism spectrum, severe physical health conditions) seeking accommodations on college campuses is increasing significantly. The issues surrounding college accommodations are becoming much more complex. Institutions of higher learning are charged with the challenging task of reviewing each accommodation request on an individualized, case-by-case basis and making a sound objective judgment. It is not always easy. Depending on the accommodation requested, the determination of reasonableness may necessitate an interactive discussion between the student, the academic program dean and/or course instructor, and the college disability services administrator. Agreement and consensus may not always be reached.

So, in light of the summary above and the existing lawsuit against Princeton University, can educational consultants expect that their students with well-documented disabilities will generally receive the accommodation of extended testing time when needed at the college of their choice? In addressing this question, there are many additional factors to consider that are too numerous to explore in this brief article. But the short answer in most cases is possibly, more than likely—probably. However educational consultants can help college bound students with disabilities navigate this ever changing landscape by having the student engage in the following two-part exercise:

First, ask your students to think carefully about, and discuss directly with you, the answers to the following questions:

1. What are the barriers or limitations resulting from the interaction between your documented disability and the campus environment, curriculum, or program you are considering;

2. What are the possible accommodations that you believe might remove the barriers and why;
3. Do you believe you would have equal access to the course, program, activity, or facility without the identified accommodations and why?

Upon answering these questions, your students should be able to succinctly "flush" out those accommodations self-perceived as most critical to full access and should enable him/her to clearly articulate a sound rationale between his/her disability and the accommodations they intend on seeking. Accommodations that have a direct link to the student's functional limitations are more likely to be approved. Keep in mind that the identification of fair and reasonable accommodations is the goal. Unnecessary and "just because" accommodations should fall quickly by the way side. In other words, just because an accommodation was previously received in a K-12 setting, it does not mean that it is reasonable or necessary in a higher education setting. Therefore in promoting this exercise, educational consultants should encourage their students to be mindful that "fair" does not mean that everyone gets what they want. It doesn't mean that everyone gets the same thing. "Fair" means that everyone gets what they need, based to a large extent on the interpretation and application of relevant disability law.

Next, after the student has narrowed down his/her final college selection list, have the student ask the college disability support services office the following questions:

1. Whether the possible accommodations the student has identified would fundamentally alter the nature of or effect the essential elements of the intended course of study;
2. Whether providing the accommodations would result in an undue burden for the college;
3. If applicable, whether the identified accommodations would be viewed in any way as a direct threat to the health and safety of self or others;
4. Whether there are any viewed consequences of the identified accommodations upon the operation and educational mission of the institution, specific courses, program, or curriculum;
5. Whether there are any other potential barriers that may prevent the student from receiving the identified accommodations?

It goes without saying that a student's due diligence in exploring the institution's general philosophy towards accommodating students with disabilities is an essential component of the enrollment decision, among other factors. By engaging in this discovery process during the college selection process, hopefully students will find themselves less likely confronted with an unexpected "no" response to an accommodation request after enrollment. Once enrolled, however, receiving a "no" response should never be viewed as the end of the accommodation discussion. While institutions may at times have a valid and legitimate reason to conclude that an accommodation request is not reasonable, with a little self-advocacy, ingenuity, creativity, and a collaborative spirit with college administrators and faculty, very often alternative yet equally effective accommodations that are indeed reasonable can be identified. Well-informed IECA educational consultants can serve a key role in guiding and supporting students through that process.

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