Understanding and Developing the Foundation for Sound Accommodation Decisions

Enjie Hall, University of Minnesota
Kristie Orr, Texas A&M University
Adam Meyer, University of Central Florida
Owning the Role and Charge of Our Office
Back to the Basics

• How have we strayed?
• Why have we strayed?
• What’s wrong with where some of us have ended up?
Role of the Disability Office

• Facilitate access
• Prevent discrimination
• Educate the campus community
General Accommodation Process

• Does the student have a disability?
• What are reasonable accommodations?
Access versus Success

• Is your office a “success” office or an “access” office?
• Can you be both?
How We Carry Out Our Work
So what is our role? What is our mission?

To be advocates for disability nondiscrimination, equal access, and equal opportunity through campus-wide collaboration and the coordination of good design and reasonable accommodations.
Nondiscrimination and Access Means...

Disabled people experience nondiscrimination and equitable access when they are able to:

• Fully engage and participate in the same activities, campus services, benefits and experiences offered to a person without a disability;
• Utilize the same information shared with everyone;
• Have the same opportunity to achieve.

Adapted from Section 504, 104.4 Discrimination Prohibited
The Interactive Process Big Picture

- Understanding and/or influencing the design of the environment
- Essential elements
  - Learning objectives
  - Physical layout
  - Policies and procedures
  - Perspectives of others
  - Attitudes of others
  
- Our Insight and Consultation
  - Student
  - Faculty
  - Stakeholder
  - Our Research

- Awareness of Relevant Barriers and Disability Factors
What is the purpose of the interactive process?

• Is this a student with a disability....

• Who needs an accommodation that is reasonable and necessary for equitable access and nondiscrimination...

• That will logically remove an unnecessary academic barrier (at the intersection of the disability and the environment)

• Without fundamentally altering the academic or campus standards, objectives, expectations, and/or experience?
The Key for OCR Is Process

• OCR predominantly reviews process

• If you document the process as it unfolds, you should be in the clear should the student later complain to OCR.
  • No known OCR or court ruling overturning a fundamental alteration determination regarding a genuine academic determination after completion of a proper process.

• When OCR does find a flawed process, it often directs the school to reconsider the determination; it does not substitute its judgment on what the outcome should be.
Remember...

• It is not about facilitating a specific accommodation

• It is about ensuring equal access, equal opportunity, and nondiscrimination

• What that looks like for some accommodations will vary by course (or may not be reasonable at times)
Three Essential **LINEAR** Steps to Facilitating Access and Determining Reasonable Accommodations

1. Is this a person with a disability?
   - Physical or mental impairment that substantially limits one or major life activities

2. Relative to a specific disability, is the requested accommodation (or what accommodations are) **logical**, **reasonable** and **necessary** to provide equitable access, remove academic barriers and ensure nondiscrimination?
   - What functional limitations intersect with the environment?

3. Determine how/if the accommodation is reasonable within the academic context.
   - May lead to a fundamental alteration assessment
What the Three-Step Process is Not

1. Identify a student with a diagnosis (or a disability)

2. Student requests an accommodation. (Assume it is reasonable.)

3. Work with faculty to facilitate obviously reasonable accommodations or assess if a fundamental alteration exists
What the Three-Step Process is Not

1. Professor is willing to accommodate a student so long as the disability office says that is okay.

2. Student requests an accommodation.

3. Disability Office determines the accommodation is reasonable since the professor has no problems with it.
AHEAD Guidance on Documentation Practices: From the Document

▪ PRIMARY --- The student is a vital source of information regarding how he or she may be “limited by impairment.” A student’s narrative of his or her experience of disability, barriers, and effective and ineffective accommodations is an important tool which, when structured by interview or questionnaire and interpreted, may be sufficient for establishing disability and a need for accommodation.

▪ SECONDARY --- The impressions and conclusions formed by higher education disability professionals during interviews and conversations with students or in evaluating the effectiveness of previously implemented or provisional accommodations are important forms of documentation.

▪ TERTIARY --- Documentation from external sources may include educational or medical records, reports and assessments created by health care providers, school psychologists, teachers, or the educational system.
AHEAD Guidance on Documentation Practices: Interpretation

- PRIMARY --- Talk to the student as the first, initial step in the process (not always a heavier focus but always a first focus)

- SECONDARY --- What do you, the professional, assess from your point of view?

- TERTIARY --- Bring in outside information as needed to close gaps in the decision-making
Asking for Documentation with Rationale is OK

It is often possible to evaluate whether a requested accommodation is reasonable or not with minimal reliance on external documentation. This is true even if the student has never received formal accommodations or recently acquired a disability and is seeking guidance to determine accommodations that might be effective. However, if the student is unable to clearly describe how the disability is connected to a barrier and how the accommodation would provide access, the institution may need to request third party documentation focused on illustrating that connection.

(From AHEAD Guidance on Documentation)
Social Justice
Social Justice Concepts for our Work

“Justice is truth in action.” – Benjamin Disraeli
Principles of Social Justice

• Access to resources
• Equity
• Participation
• Diversity
• Human rights
Disability Experience

- Interaction between person and environment
- Mind/body uniqueness
- Existence of external Barriers prevent participation
- Equal opportunity
- Same experience as non-disabled peers
- Full participation
Advance Accessibility and Inclusive Design

• All can interact and participate
• Good design that is equitable, flexible, simple, and intuitive
• Not only compliant but also usable and functional
• Accommodations are implemented when accessibility is not possible or not yet available
The Role of Compliance:

• Laws and regulations set our compliance foundation
• ADA definition for disability
• Diagnosis or functional limitation alone does not equate to disability
• Barriers may exist in the physical environment, technology, communication, policies/procedures, program, or attitudes
What social justice and social model is and is not in relation to our compliance decisions

• Need for access rather than a preference, convenience, or want
• Accommodations should not provide an advantage or be a means to gain the system
• Accommodations should not be detrimental to learning nor experiences
• Distinction between a disabled person in a situation versus a disability related access issue
• Acquire same information, engage in same interactions, and enjoy same services as a person without a disability
• In an equally integrated and equally effective manner, with substantially equivalent ease of use
• In timely manner
Civil Rights and Social Justice
Example: Captioned Videos

**Civil Rights**
- Professor has a deaf student enrolled and uses many videos (originally uncaptioned)
- Disability office develops a plan to caption the videos (hopefully before videos go “live” to the class)
- Reactive
- Individually focused
- Nondiscrimination achieved
- Equitable?
- Videos captioned in the end

**Social Justice**
- Social systems have been changed through technology and mindsets to where captioned videos are the intuitive, seamless norm
- Professor has a deaf student enrolled and uses many videos
- Disability office need not do anything!
- Proactive
- Nondiscrimination achieved
- Equitable
- Videos captioned in the beginning/ end