

MINNESOTA STATE COLLEGES AND UNIVERSITIES

INDIVIDUALS WITH DISABILITIES

REFERENCE GUIDE

STUDENTS/PUBLIC



Minnesota State Colleges & Universities

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Minnesota State Colleges and Universities is committed to ensuring an educational and employment environment where the public, students, faculty and staff can learn and develop to their full potential. The purpose of this manual is to provide readily available, concise information to assist with difficult and sensitive issues.

This Reference Guide was prepared by the Office of the Minnesota Attorney General and by the Division of Academic and Student Affairs of the Minnesota State Colleges and Universities System Office.

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ABOUT THIS SECTION

The purpose of this section is to provide a very brief outline of the law and the accommodation process. It is provided as a quick reference tool. Please refer to the section following this for a more comprehensive discussion of the issues.

QUICK TAKES THE LAW

1. Prohibits discrimination

- a. in providing public services (students and public)

2. Definition of discrimination

Disparate Treatment or Impact
Failure to accommodate

3. Who is covered?

- a. Qualified disabled individuals:

Individuals who have a physical or mental impairment that substantially affects a major life activity, those with a record of such or those who are regarded as such.

Qualified means:

Students/public: Individual seeking access to benefits meets eligibility requirements with or without a reasonable accommodation.

Direct threat: Individuals are not "qualified" if they present a direct threat to the health or safety of themselves or others.

- b. Can require documentation of disability to determine if covered.

4. Reasonable accommodations

Establish an interactive process to determine reasonable accommodations. Although interactive, the institution makes the final decision regarding accommodations. A personal device or service is not a reasonable accommodation.

5. Some accommodation exceptions

The institution is not obligated to provide accommodations that cause:

- a. Undue burden/hardship; or
- b. Fundamental alterations to the program

QUICK TAKES

RESPONDING TO REQUESTS FOR ACCOMMODATION

1. **Contact**

The individual must request accommodation (i.e., self-identify).

2. **Determine if the individual has a disability.**

Making a determination of whether an individual is disabled is often difficult and is the subject of many lawsuits. Please seek legal counsel if you are unsure of an individual's disability. You must ask for documentation even if the disability is physical and obvious and conduct an individualized evaluation of the documentation.

3. **Is the individual qualified?**

If the individual is seeking to access a program or benefit of the institution, you must determine if the individual meets the essential eligibility requirements and is not a direct threat to the health or safety of either themselves or others. For example, if a masters program requires a bachelor's degree, an individual who does not have a BA does not meet the essential eligibility requirements of the program and is not eligible for a reasonable accommodation. Remember that "access to program or benefit" includes access by members of the public and not just students.

Do not make medical judgments. Your inquiries should be task specific and you should not assume that someone couldn't perform a task because they have a certain disability. You may consult other experts if you have any questions.

4. **Determine a reasonable accommodation.**

This process should be flexible to allow a give and take between the institution and the individual. However, remember that, while the preference of the individual should be considered, the institution has the ultimate discretion to choose among effective accommodations. The institution does not have to choose the best accommodation, but rather the accommodation that is sufficient to meet the program-related needs of the individual.

5. **Determine if the accommodation is feasible or would pose an undue burden/hardship to the institution.**

If you determine that the accommodation is not feasible, would fundamentally alter the program or would pose an undue burden/hardship, you are not obligated to provide that accommodation to the individual.

6. Other services that might be available even if not eligible.

An institution may choose to provide certain services whether or not the individual is disabled. For example, many institutions provide tutoring based on first come, first serve and the availability of tutors.

7. Complaints

Institutions must have a complaint process for individuals to appeal an accommodation decision or to file a complaint of disparate treatment/impact or harassment. Please refer to MnSCU policies and procedures #I.B. and I.B.1. regarding the discrimination complaint process.

ABOUT THIS SECTION

This section is an expanded discussion of the law. The purpose is to provide readers with more extensive information than Section I for those instances in which readers need more than a quick overview of the law.

DISCUSSION OF LEGAL REQUIREMENTS

There are several laws that address the institution's requirements regarding individuals with disabilities. These include: The Americans with Disabilities Act (Federal), The Rehabilitation Act (Federal) and the Minnesota Human Rights Act.

Duties under the law.

MnSCU and MnSCU institutions have two duties under the law regarding individuals with disabilities. First, MnSCU and MnSCU institutions may not treat qualified individuals with disabilities differently or have a policy that disparately impacts qualified disabled individuals. Second, MnSCU and MnSCU institutions must allow access to program and benefits and reasonably accommodate qualified disabled individuals. Qualified disabled individuals may include members of the public, students or employees. The institution has a responsibility to investigate and take prompt, appropriate action in response to complaints of disparate treatment, disparate impact, or failure to accommodate.

NOTE: This manual does not address the issue of removing physical barriers to access. This is a highly specialized area; and you should consult your facilities department to ensure that the institution complies with facilities requirements (such as wheelchair access to rest rooms, handicapped access to buildings, etc.).

Who is a disabled individual under the law?

An individual with a disability is any person who:

- a. Has a **physical or mental impairment** that **substantially limits** one or more of the person's **major life activities**.
- b. Has a **record** of such impairment, which means that a person has a history of or has been classified as having a mental or physical impairment that substantially limits one or more major life activities.
- c. Is **regarded** as having such an impairment which means:
 - i. Has a physical or mental impairment that may not substantially limit major life activities but that is treated by others as constituting such a limitation;
 - ii. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment;
 - iii. Has no impairment but is treated by others as having such an impairment.

THIS IS A CASE SPECIFIC INQUIRY.

What is a physical or mental impairment?

A physical or mental impairment includes 1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of several body systems; or 2) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Physical characteristics are not considered to be mental or physical impairments. For example: eye or hair color; height, weight, or muscle tone characteristics that are within "normal" range; predisposition to illness or disease; common personality traits such as poor judgment or quick temper; or environmental or cultural disadvantages such as poverty, lack of education or prison record are not considered disabilities.

The following are statutory exceptions from the definition of disability:

1. Homosexuality and bisexuality;
2. Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, and other sexual behaviors;
3. Compulsive gambling, kleptomania, and/or pyromania; and
4. Use disorders resulting from the current use of illegal drugs.

Substantial limitation of a major life activity.

A substantial limitation of a major life activity means that an individual's activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and participating in community activities, are restricted as to conditions, manner or duration which they can be performed by the average person in the general population. Whether something is a major life activity is the subject of many court cases.

Whether an impairment "substantially limits" a major activity may be determined by looking at the following factors:

The nature and severity of the impairment;

How long it will last or is expected to last;

It's permanent or long term impact, or expected impact.

Note that the state law has changed this definition to "materially limits a major life activity." The Minnesota Supreme Court has said "The factors and considerations are now viewed in a less stringent light, nevertheless, they remain the same." Sigurdson v. Bolander & Sons Co., 532 N.W.2d 225 (Minn. 1995). It is still not clear what analytical difference this change in terminology has made.

Several issues concerning the definition of "substantially limiting a major life activity" include the following:

? Who is the "average person?"

Who is the individual compared against--an average person or an average peer?

? Is ability to work limited?

This must be more than just one job. The federal regulations say either a class of jobs or a broad range of jobs in various classes. Some courts have gone beyond the regulations and say the person must be unable to perform any job. As a side note, if the person is substantially limited in some other major life activity, whether the individual is also limited in their ability to work is irrelevant.

? Does past academic success without an accommodation indicate that someone is not limited in their ability to learn?

? Mental impairments do not automatically limit life activities.

Existence of mental impairment in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) is not enough. The individual must show a substantial or material limitation of a life activity.

? Should mitigating measures be considered (such as successful medication treatment) when determining if an impairment is substantially limiting?

EEOC says such measures should not be considered. Courts vary as to whether the EEOC's position is correct, but generally agree that a person is not limited if a vision impairment is correctable with glasses.

? What if individual fails to correct a correctable impairment?

This is unclear. There does not appear to be a case in the Eighth Circuit on this subject (controlling in Minnesota).

COURTS ARE CURRENTLY WRESTLING WITH THESE ISSUES.

What if impairment is temporary?

Generally, a temporary impairment should not be considered a covered disability. Courts have come to a variety of conclusions as to whether a temporary impairment will be considered a covered disability and there is no clear guidance as to what period of time constitutes “temporary.” The Equal Employment Opportunity Commission (“EEOC”) guidelines state that it is not the length of time of an impairment, but the impact of that impairment and whether a person is “substantially limited” by an impairment. It is possible under the EEOC guidelines that a temporary disability, which has a long-term effect, would be a disability. However, the EEOC clearly says that such things as broken limbs do not constitute a disability which seems contrary to the EEOC’s other statements.

Who is covered by the law?

In order to be covered by the law, disabled individuals seeking public services must be qualified. Individuals who pose a direct threat to the health and safety of themselves or others will not be covered by the law. Institutions may require documentation in order to determine whether an individual is covered by the law.

1. Who is covered?

A disabled individual seeking access to the facilities and programs of the system or institution is a qualified individual when, with or without reasonable accommodations, the individual meets the essential eligibility requirements for receipt of services or participation in an institution's program or activity.

2. What are the essential eligibility requirements?

The eligibility requirements must be essential to the program. The same criteria for eligibility must be used for all potential participants (not just the disabled applicants). The eligibility criteria cannot screen out individuals based on their disability but can screen for skill or performance levels.

3. Who is not qualified?

An individual who poses a direct threat to health and safety of others may be “unqualified.” While Title II of the Americans with Disabilities Act does not explicitly contain this phrase, the comments to the regulations acknowledge that someone who poses a direct threat to others would not be qualified. Moreover, when consulted, the U.S. Department of Education acknowledged that someone who posed a direct threat to themselves would usually not meet the essential eligibility requirements but there might be some cases where an individual should be able to assume the risk. The determination that a person poses a significant risk of substantial harm must be based on an individualized evaluation of: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether the reasonable accommodation will mitigate the risk.

What are reasonable accommodations?

When a qualified disabled individual requests accommodations, the institution must enter into an interactive process to determine what reasonable accommodations are needed and will be provided. Institutions may seek the advice from experts such as the individual's physician as to what accommodations might be appropriate. While institutions should consider the individual's preferences, the college has the final power to determine the accommodation.

Institutions are not required to provide accommodations that are an undue burden/hardship, cause a fundamental alteration of a program, or constitute personal devices.

1. What is program accessibility?

Program accessibility involves the following three characteristics: 1) The program is accessible and usable in the most integrative setting; 2) Program access is appropriate to achieve equal benefit; and 3) Methods of communications (telephones etc.) are equally effective.

2. What are reasonable accommodations?

Reasonable accommodations in the provision of public services require reasonable modification in policies, practices and procedures, removal of architectural barriers or other accommodations that ensure equal access to public services, programs or activities.

3. Reasonable accommodations do not need to be provided if they pose an undue burden.

An undue burden in the provision of public services refers to undue financial or administrative burdens. The factors to consider under the Minnesota Human Rights Act are:

- a. The type and purpose of the agency program;
- b. The nature and cost of the proposed modification;
- c. Documented good faith efforts to explore less restrictive or less expensive alternatives;
and
- d. The extent of the consultation with knowledgeable disabled persons and organizations.

4. Reasonable accommodations that result in a fundamental alteration do not need to be provided.

An institution is not required to accommodate an individual if the reasonable accommodation would result in a fundamental alteration of the nature of the program, service or activity.

5. Reasonable accommodations do not include personal devices.

The institution has no obligation to provide accommodations that are primarily for the personal benefit of the disabled individual. For example, the institution would not be required to provide a wheelchair, glasses or prosthetic devices.

SPECIAL TOPICS

1. Multiple chemical sensitivity.

This is not currently recognized as a legitimate impairment by a variety of mainstream medical associations. Moreover because of the broad spectrum of "triggers" of symptoms, most people with this "complaint" will not be qualified.

Even if recognized as a disability, most requests for accommodations would fundamentally alter the program. The U.S. Department of Justice, Civil Rights Division, Disability Rights Section states the following in its guidance entitled Commonly asked Questions About Title II of the Americans with Disabilities Act (ADA)(November 1994):

Is a city required to modify its policies whenever requested in order to accommodate individuals with disabilities?

.....

[W]here an individual with an environmental illness requests a public entity to adopt a policy prohibiting the use of perfume or other scented products by its employees who come into contact with the public, adopting such a policy is not considered a "reasonable" modification of the public entity's personnel policy.

2. Asymptomatic HIV.

While HIV has historically been recognized as a covered disability (an impairment that substantially limits a major life activity), courts are beginning to question whether asymptomatic HIV will automatically be covered by the law. The U.S. Supreme Court has recently ruled on this issue: in Abbott v. Bragdon, ___ U.S. ___ (1998) the Court found asymptomatic HIV to be a covered disability but did not rule on the issue of whether the individual posed a direct threat.

3. Learning disabilities.

- a. Definitions are still volatile in the area.
- b. Courts are split on the definition of "substantially limiting the life activity of learning."
- c. Be cognizant of the qualifications of the examiner but be aware that courts are tending not to uphold very narrow criteria.
- d. The documentation should be current unless it is not medically necessary to update the documentation.
- e. The institution should analyze the relationship of the accommodation to the academic program.

4. **Programs abroad, off-campus programs, joint programs and non-credit courses.**

This is a complicated issue which is very fact specific. You should consult with the college's attorney.

Possible resources:

Iron Arrow Society
AHEAD
HEATH
Mobility International

5. **Smoking.**

Note that the regulations specifically allow prohibitions or restrictions on smoking in places of employment.

6. **Alcohol and Drugs.**

Pending.

ABOUT THIS SECTION

The purpose of this section is to provide the reader with a step by step analysis of the process for evaluating whether an individual has a covered disability and whether accommodation is appropriate and reasonable.

COMMUNICATING ABOUT THE INSTITUTION'S SERVICES CONCERNING DISABLED INDIVIDUALS

1. GENERALLY

How do students and members of the public learn about the institution's services?

Guidance: Good communication about policies and procedures can prevent problems and limit the institution's liability. Therefore, it is a good idea to audit your practices to determine if you are effectively communicating to individuals about your policies and procedures. Moreover, the law requires that information be available concerning individuals' rights under the law.

2. POSTED NOTICES

a. Where does the institution post notices regarding its obligations under the law?

Guidance: The law pertaining to public services is not as specific as the employment provisions. It says a public entity must "make information available" regarding the provisions of the law to applicants, participants and beneficiaries and other interested persons "in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured then by the Act and [federal regulation]." The display of informative posters in service centers and other public places is a suggested method.

b. What do the notices say?

Evaluate the content.

Are they easily understandable?

See Section titled *Disability Data Elements* for examples of students and general public notices.

3. POLICIES AND PROCEDURES

a. Accommodations

1. Does your institution have a readily available MnSCU system policy?
2. Does the institution's policy comply with the MnSCU system policy?
3. Where are the institution's policies and procedures located regarding reasonable accommodations

4. Are they easily understandable?

Guidance: In addition to posted notices, institutions must publish its nondiscrimination policies and procedures and have copies conveniently located for easy access. Minn. Stat. § 135A.15 requires that “The policy and related information must be readily available to enrolled students and applicants for admission. At a minimum, information on services, including a contact person and location, must be included in the campus catalog and in the schedule of course offerings each term.”

b. Complaints

1. Where are your policies and procedures located regarding the procedure for complaints?
2. Are they easily understandable?

Guidance: Institutions must have an established procedure for individuals to complain about failure to accommodate and disparate treatment or impact, must publish these policies and procedures, and must make information available about how to locate the responsible employee for coordinating efforts of the institution in complying with the law. Remember that complaints regarding disparate treatment are covered by the MnSCU policy 1.B.1 and MnSCU procedure 1.B.1.1. In regards to accommodations, one suggestion would be to have a first-step process where individuals would try to resolve an accommodation concern with the office in charge of processing such requests. If the individual is still unhappy, there must be available an appeal process to another office.

4. NOTICES ON PUBLICATIONS

a. Do you put a notice about accommodations on your fliers and other publications about events occurring on campus?

Guidance: Announcements about events should contain a notice about how individuals can request accommodations and alternative formats. See Section titled *Disability Data Elements* for a form.

b. What information about services do you put in handbooks, catalogs and other similar publications?

Guidance: Handbooks, catalogues, schedules and similar publications must contain information about the institution's nondiscrimination policies, and should contain information about how to request accommodations and how to complain if individuals believe they have been discriminated against. In addition, Minn. Stat. § 135A.15 requires that “The policy and related information must be readily available to enrolled students and applicants for admission. At a minimum, information on services, including a contact person and location, must be included in the campus catalog and in the schedule of course offerings each term.”

c. Review notices for content and understandability.

5. BROCHURES ABOUT SERVICES

Guidance: There is no legal requirement to publish brochures on disability services. It is, however, important to make information as available as possible in as convenient a format as possible. Brochures are certainly one, but not the only, method for disseminating information. Other methods suggested by the Department of Justice are handbooks, manuals, pamphlets, or broadcast of information by television or radio. Remember that any publication must also be available in alternative formats to ensure equal access to communication.

6. OUTREACH AND EDUCATION:

a. To whom does your institution provide information?

Guidance: Besides those requirements discussed above, technically there is no legal requirement that the institution distribute information in a specific form. To the extent that the institution can inform potential or existing students about the institution's policies and procedures, the better position the institution is in regarding defending legal actions because outreach means that the institution has taken every opportunity to ensure communication about policies and procedures. In fact, institutions are strongly encouraged to develop and disseminate information when appropriate as part of its recruitment, orientation or educational responsibilities.

b. The following are suggestions about opportunities to educate consumers about the process and policy:

Liaison with High School counseling offices.

During informational meetings about the student application process to the institution.

During employee or student orientation (both by oral presentation and orientation materials)

Newsletters

c. Staff

Should be trained:

Not to make any commitments or promises.

To refer the person to correct office and not attempt to enter into an accommodation process unless specifically authorized to do so.

How to make a welcoming environment for diverse populations.

Consider publications directed at staff.

7. **REVIEW**

- a. **Make sure all communications are consistent and do not overstate your obligations.**

For example, does your handbook lead someone to believe they have a right to receive a particular accommodation?

- b. **Make sure that communications are equally effective for disabled individuals.**

You should offer all communication in an alternative format.

PROCESS FOR REQUESTING ACCOMMODATION

1. MAKING CONTACT

a. **Who do individuals contact regarding their request?**

Remember that the individual must initiate contact and request an accommodation.

b. **Does the institution have a specific office that responds to these requests?**

You might consider setting up a specific office that is dedicated to responding to requests. You may be required to accommodate students, employees AND members of the public who are attending public events or are present on your campus. At the least, you should have specific individuals that ALL requests must go through and you must designate a "responsible employee" who is responsible for coordinating the institution's efforts to comply with the law. Having specific individuals responsible for accommodation decisions improves consistency regarding accommodation decisions.

Make sure the process is clearly communicated in brochures, etc. The law requires dissemination "of information about how to locate [the responsible] employee."

2. INTAKE: OBTAIN INFORMATION

a. **Intake**

See Section titled *Disability Data Elements* for example of form.

b. **Obtain documentation of the disability. If the disability is physical and obvious, you should still require documentation.**

Obtain a release which enables you to request information from medical providers. You should obtain a release even if the disability is obvious to determine appropriate accommodations.

Contact the medical provider by letter, if appropriate.

See Section titled *Disability Data Elements* for form.

Follow-up if needed.

c. What if person cannot afford assessment?

- Refer to Division of Rehabilitation Services.
- Encourage him/her to seek other resources.
- Institution is not obligated to pay.

There may be circumstances where an institution may choose as a policy matter to financially support an independent medical assessment. Please consult with the college/university attorney and MnSCU if you are unsure about this issue.

d. Should the institution offer a grace period?

An institution is required to reasonably accommodate only after it has received adequate documentation. Some schools, however, have chosen to grant a grace period wherein an accommodation will be given for a particular amount of time without documentation. If no documentation has been received by the end of this time period, the institution will stop the accommodation(s). This is a policy decision. Be aware of the tendency to forget to monitor this and allowing the accommodation period to extend beyond the time period. In addition, once you provide the accommodation, it is harder, although not impossible, to argue that the accommodation is an undue burden/hardship or fundamental alteration.

3. EVALUATE ADEQUACY OF DOCUMENTATION

a. What if medical documentation or IEP/504 Plan documentation was sent to another office?

- ? If the materials went to another office, have that office forward the materials to the Disability Coordinator's office. Instruct the other office not to maintain copies of the materials as they are private and must be kept separate from the student's other files.
- ? Send follow-up letter to individual. See form in section titled *Disability Data Elements* for students.

b. What if medical documentation or IEP/504 Plan documentation was sent without an explicit request for accommodation?

Again a follow-up letter should be sent to the individual to clarify the process and instruct the individual to explicitly request an accommodation.

c. What is adequate documentation (content)?

Suspicion is not enough, adequate documentation of disability is required. In J.H. v. ABC Care, Inc., 953 F. Supp. 675 (D.Md. 1996) (the court ruled that the provider needs a diagnosis and not just a suspicion). In Miller v. National Cas. Co., 61 F.3d 627 (8th Cir. 1995) (the court ruled that the employer did not know of disability where the employee asserted that employer should have known because of her unexcused absences and stressful family situation).

Documentation of a disability must provide the following:

- ? identification of the nature and severity of the disability which the individual has,
- ? specific information regarding the manner in which the disability affects the individual,
- ? description of the current course of treatment, if any, including medications and side effects,
- ? prognosis for the disability including:
 - duration or expected duration of impairment; and permanent or long-term impact or expected permanent or long-term impact.
- ? suggestions regarding possible accommodations.

d. What do I need to know about collecting, retaining and disclosing information?

You should remember privacy issues which are addressed by the Minnesota Government Data Practices Act and the Family Educational Rights and Privacy Act of 1974. Therefore, you need to give a Tennessee warning to the individual requesting accommodation when collecting information. You must also keep medical information separate from student files. You should only disclose medical information on a "need to know" basis.

e. Who pays for the documentation?

The institution is not obligated to pay for assessment or diagnosis. In other words, the documentation should be at the individual's own expense. There might be resources available to individuals through Division of Rehabilitation Services. Individuals should consult with the appropriate agency. There may be circumstances where an institution may choose as a policy matter to financially support an independent medical assessment. Please consult with the college/university attorney and MnSCU if you are unsure about this issue.

f. How current does the documentation need to be?

The general practice is to require documentation that is not older than three years. However, institutions must conduct an individualized evaluation of documentation in each case. Where a disability would not change over time, it would not be medically necessary to update older documentation of the disability. Because capabilities and technology changes over time, documentation of what accommodations are needed may need to be updated.

g. What if parents call and request information about or ask to be involved in the accommodation process for their child?

Access by parents to information about a student is limited by the Minnesota Government Data Practices Act and the federal Family Educational Records and Privacy Act. Parents should be instructed to have the student contact the ADA coordinator. You may also want to follow up with a letter to the parents with a brochure enclosed. A parent's phone call is not a request for accommodation by the student.

h. Where is medical information filed?

Medical information should be stored separately from personnel and student files.

i. Can you transfer information to another institution?

Students should give the next institution a release so that the institution can get medical information directly from the medical provider.

j. How often should you request documentation?

The law gives no specific guidance. It does make sense, however, to have students renew their requests each semester. This ensures that the student is getting the accommodation he/she needs specific for each class.

k. From whom should you get the documentation?

You should get a release from the individual and get the information directly from the medical provider.

l. What kind of documentation should you accept?

Evidence from some other proceeding or process is not enough (such as a social security determination of benefits). You should consider IEP's, 504 plans and other types of documentation, but these are not dispositive and do not constitute medical documentation.

Evidence of past accommodations: The fact that someone provided an accommodation in the past is not documentation of a disability. Ware v. Wyoming Bd of Law Examiners, 973 F. Supp. 1339 (D. Wyo. 1997).

The documentation should be from a qualified assessor. This is not necessarily an M.D. but should be someone who is qualified to make the particular diagnosis. For example, a chiropractor is not qualified to assess psychiatric conditions. A licensed social worker may be qualified to assess a learning disability. Remember that a medical doctor is usually not the best resource for vocational capacity assessment. There are resources available such as vocational counselors or qualified rehabilitation consultants.

m. How much ahead of time can requests for accommodation be required?

Courts have upheld a reasonable amount of lead time. Examples range from two months to two weeks. This will be fact specific.

n. What if I am unsure about the validity of the documentation?

You should get a release as part of the intake so that you can talk directly to the health care provider.

o. Can I ask before the student is admitted?

In general, pre-admission inquiries are not permissible. There is an exception when the institution is taking remedial or voluntary action and invites applicants to voluntarily disclose information. Please consult with the institution's attorney as there is certain information the institution must include.

p. Remember to keep documentation private.

Information should be separate from the student file. Disclosure should be on a need to know basis only. You may also want to evaluate how many files are kept and reduce that amount as much as possible.

DETERMINE IF THE INDIVIDUAL IS A QUALIFIED DISABLED INDIVIDUAL

1. DOES THE PERSON HAVE A PHYSICAL OR MENTAL IMPAIRMENT?

- ? Physical characteristics, personality traits, environmental or cultural disadvantages (such as poverty or lack of education) are not impairments.
- ? Remember the statutory exceptions:
 1. Homosexuality and bisexuality;
 2. Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, and other sexual behaviors;
 3. Compulsive gambling, kleptomania, and/or pyromania; and
 4. Use disorders resulting from the current use of illegal drugs.

2. DOES THAT IMPAIRMENT SUBSTANTIALLY OR MATERIALLY LIMIT A MAJOR LIFE ACTIVITY?

- ? Is impairment temporary?
- ? What major life activity is restricted?
- ? How is the major life activity restricted?
- ? Have you considered:
 - The nature and severity of the impairment;
 - How long it will last or is expected to last;
 - It's permanent or long term impact, or expected impact.
- ? Have you done an individualized evaluation or did you accept a general statement about the nature of the disability?

REMEMBER that individuals who have a record of or are regarded as having a disability are not eligible for accommodations.

3. **ARE THERE MITIGATING MEASURES OR MEASURES THAT WOULD CORRECT THE IMPAIRMENT? IF SO, CAN THEY BE CONSIDERED?**

Consult with the college's attorney.

4. **IS THE PERSON QUALIFIED TO PARTICIPATE IN THE PROGRAMS OR SERVICES YOU OFFER?**

? What are the eligibility/participation requirements and are they essential?

A rational relationship must be shown although courts will give some deference to academic decisions.

a. Must be essential to program or course.

Identify skills, prerequisites or credentials needed to be eligible for the program or course.

Identify desired outcome of course and specific tasks. Outcome is defined as behavior, action or status of student that can be observed, measured, and can be reliably determined. Institutions may consider the occupational requirements when determining whether an element of a course is essential. However, the future employment prospects of an individual should not be dispositive for whether an individual is eligible for a program.

b. Same criteria for eligibility must be used for all potential participants (not just disabled applicants).

c. Eligibility criteria cannot exclude individuals based on their disability unless essential.

? Does person pose a direct threat of health or safety to him/herself or others?

What is the specific risk?

What is the nature of the risk?

What is the duration of the risk?

What is the severity of the risk?

What is the probability that injury will occur?

What is harm?

Is harm substantial?

Is harm imminent?

Will a reasonable accommodation mitigate the risk?

? Can person meet the eligibility requirements with or without a reasonable accommodation?

DETERMINE A REASONABLE ACCOMMODATION

1. USE AN INTERACTIVE PROCESS

a. EEOC recommended process

The EEOC recommends the following process for determining the appropriate reasonable accommodation:

1. Consult with the individual to find out his or her specific physical and mental abilities and limitations as they relate to participation in the institution's programs and benefits. Identify the barriers to participation in the programs and assess how these barriers could be overcome with an accommodation.
2. In consultation with the individual, identify potential accommodations and assess how effective each would be in enabling an individual to participate in the institution's programs.
3. If there are several effective accommodations that would provide an equal educational opportunity, consider the preference of the individual with the disability and select a combination that best serves the needs of the individual and institution. If more than one accommodation would be effective for the individual with a disability or if the individual would prefer to provide his or her own accommodation, consider the individual's preference. However, the institution is free to choose among effective accommodations and may choose one that is less expensive or easier to provide. Additionally, the fact that an individual is willing to provide his or her own accommodation does not relieve the institution of the duty to provide this or another reasonable accommodation should the individual for any reason be unable or unwilling to continue to provide the accommodation.

b. Preference of individual

This process should be flexible to allow a give and take between the institution and the individual. Although the preference of the individual should be considered, the institution has the ultimate discretion to choose between effective accommodations. The institution does not have to choose the best accommodation, but rather the accommodation that is sufficient to meet the program-related needs of the individual.

c. Breakdown of process

It is important to show good faith and not to be the cause of the breakdown of the process.

d. Follow-up with medical provider or other expert if you had not received adequate information about accommodations under your previous contact with the medical providers.

2. EVALUATE PROPOSED ACCOMMODATION.

a. What is the reason for the accommodation?

Public Services:

1. Modification to rules, policies, or practices;
2. Removal of architectural or communication barriers; or
3. provision of auxiliary aids and services.

b. What is the nature of the accommodation?

Public Services

- ? Is the accommodation needed because of the disability?
- ? Is the accommodation program related?

c. Determine what accommodation options exist.

- ? What is the individual's preference?
- ? What do experts/resources suggest?
- ? Consult with supervisor or professor.

d. How has institution accommodated impairment in the past?

e. How do similar institutions accommodate this type of impairment?

f. Analyze accommodations for:

1. Feasibility

2. Undue Burden

An undue burden in the provision of public services refers to undue financial or administrative burdens. The factors to consider under the Minnesota Human Rights Act are:

a. The type and purpose of the agency program;

b. The nature and cost of the proposed modification;

c. Documented good faith efforts to explore less restrictive or less expensive alternatives; and

d. The extent of the consultation with knowledgeable disabled persons and organizations.

3. Fundamental Alteration of the program

An institution is not required to accommodate an individual if the reasonable accommodation would result in a fundamental alteration of the nature of the program, service or activity.

A fundamental alteration would include an accommodation which would result in either lowering academic standards or requiring substantial program alteration. Wynne v. Tufts University School of Medicine, 932 F.2d 19 (1st Cir. 1991), 976 F.2d 791 (1st Cir. 1992) cert. denied, 113 S. Ct. 1845 (1993).

a. What are the essential elements of a course or program?

Rational relationship must be shown although courts will give some deference to academic decisions.

1. Must be essential to program.

2. Same criteria for eligibility must be used for all potential participants (not just disabled applicants).

3. Eligibility criteria cannot screen out individuals based on their disability.

- b. Some accommodations that might be considered a fundamental alteration.
 - 1. Waiving a requirement such as a particular prerequisite, lab or deadline.
 - 2. Home study

Factors that will be considered by OCR:

- 1. Is there classroom interaction between the instructor and students, and among students?
 - 2. Do student contributions constitute a significant component of the learning process?
 - 3. Does the fundamental nature of the course rely upon student participation as an essential method for learning?
 - 4. To what degree does a student's failure to attend constitute a significant loss to the educational experience of other students in the class?
 - 5. The Course description and syllabus,
 - 6. The method by which the final course grade is calculated, and
 - 7. Classroom practices and policies regarding attendance.
- c. Is the accommodation a request to waive an eligibility or program requirement?
 - d. Does accommodation lower the standards of performance?
 - e. Does accommodation alter the expected outcome of the program (i.e. knowledge or technique expected to be learned).
4. Effectiveness of accommodation - What is goal of accommodation?
- ? Can't guarantee success, merely access.

g. Is this accommodation a personal device?

? i.e. used primarily for the personal benefit of the individual.

? If it is, the institution is not required to provide it.

h. What if the college wants to go beyond legal obligation?

Colleges may make a decision to go beyond their legal obligations. If your institution wants to exceed its legal obligations you should document this by sending the individual a letter.

First, however, you should analyze whether this is appropriate.

1. What precedent is this setting?

If the accommodation is particularly costly it will be harder to argue undue burden or hardship.

2. How will you deal with future requests from either this individual or other future individuals?

i. Analyze specific program accommodations in light of program.

1. Is not attending class the request for accommodation?

Some possible factors to consider when analyzing whether this is a reasonable accommodation:

- a. is there classroom interaction between the instructor and students, and among students?
- b. do student contributions constitute a significant component of the learning process?
- c. does the fundamental nature of the course rely upon student participation as an essential method for learning?
- d. to what degree does a student's failure to attend constitute a significant loss to the educational experience of other students in the class?
- e. the course description and syllabus,
- f. the method by which the final course grade is calculated,
- g. classroom practices and policies regarding attendance, and
- h. consideration of whether student could attend class by electronic media.

2. Is there a legitimate educational justification for making an academic adjustment?

The accommodation must relate to the course or program.

3. Is the accommodation concerning test-taking?

? Type of questions?

Analyze whether a particular type of question is an essential part of the test.

? Amount of time?

Analyze whether speed is an essential part of the test. The general practice is one and one half times the amount of time allotted.

? Open book?

4. Is the request to waive or substitute course requirements or program requirements?

This is not a reasonable accommodation if the requirements are essential.

a. What are the essential elements of a course or program?

Rational relationship must be shown although courts will give some deference to academic decisions.

1. Must be essential to program.

2. Same criteria for eligibility must be used for all potential participants (not just disabled applicants).

3. Eligibility criteria cannot screen out individuals based on their disability.

5. Does the request alter a clinical or internship experience?

It is not a reasonable accommodation to fundamentally alter the essential requirements. However, institutions should consider the available options when considering what constitutes a fundamental alteration.

6. Does the request lower academic standards?

Lowering standards is not a reasonable accommodation.

7. Does the accommodation relate to a conduct issue?

Ignoring misconduct is not a reasonable accommodation.

3. FINALIZE PROCESS

a. Consult again with the requester about the accommodations.

Inform them about the accommodation options and the one you wish to provide. Get their input, but remember that the institution makes the final decision.

b. Document the process.

All discussion and actions taken regarding accommodations should be documented as well as any discussions with experts or outside sources.

4. MONITORING AND REEVALUATION

Remind the individual to inform you immediately if the accommodation is not working out or the individual has some concerns.

5. COMPLAINT PROCEDURES

Inform the individual about how to complain either about the accommodations or disparate treatment/impact.

EXAMPLES OF POSSIBLE REASONABLE ACCOMMODATIONS

These are examples of possible accommodations that may be reasonable depending on the particular circumstances.

1. Remove physical barriers. Examples include:
Install wheelchair ramps or modify workstations.
2. Limited job Restructuring. Examples include:
Reassign marginal functions
3. Part-time or modified work schedules
4. Reassignment to a vacant position
5. Acquisition or modification of equipment or devices
6. Adjustment or modifications of examinations, training materials or policies.
7. Provide auxiliary aids.
 - A. Examples for individuals who are deaf or hard of hearing include:
Qualified interpreters.
Notetakers
Computer-aided transcription services
Written materials
Telephone handset amplifiers
Assistive listening systems
Telephones compatible with hearing aids
Closed caption decoders
Open and closed captioning
Telecommunications devices for deaf persons (TDD's)
Videotext displays
 - B. Examples for individuals with vision impairments include:
Qualified readers
Taped texts
Audio recordings
Braille materials
Large print materials

Assistance in locating items.

C. Examples for individuals with speech impairments include:

TDD's

Computer terminals

Speech synthesizers

Communication boards

Taken from:

The Americans with Disabilities Act: Making the ADA Work for You.

Office of Attorney General: Americans with Disabilities Act Manual.

COMPLAINTS: MAKING CONTACT

1. HOW DO STUDENTS AND MEMBERS OF THE PUBLIC COMPLAIN ABOUT DIFFERENTIAL TREATMENT, DISPARATE IMPACT OR FAILURE TO ACCOMMODATE AND HOW DO THEY LEARN ABOUT THE PROCESS?¹

Who do they contact regarding their complaints?

Do you have a specific office that handles these complaints?

2. ABOUT WHAT CAN INDIVIDUALS COMPLAIN?

Individuals may wish to lodge complaints about disparate treatment or impact. Individuals may also wish to complain about a refusal to accommodation or about inadequate accommodation. It is important that the institution clearly identify to whom individuals must go to lodge each type of complaint (differential treatment, impact or failure to accommodate). You may wish to combine these complaint procedures or have separate individuals handle each type. You should separate advocacy functions from the person who decides what accommodations to provide and there should be an additional person who handles complaints.

There is a MnSCU procedure regarding how to investigate and respond to complaints about disparate treatment, impact and harassment. MnSCU procedure 1.B.1.1.

¹ Disparate treatment: a person is treated differently than similarly situated individuals.
Disparate impact: a facially neutral policy impacts a group of individuals differently than other individuals.

RESPONDING TO COMPLAINTS

COMPLAINTS OF FAILURE TO ACCOMMODATE OR INADEQUATE ACCOMMODATION

1. Is person covered individual?
2. If covered, review proposed accommodation decision for
 - ? effectiveness
 - ? reasonableness
 - cost
 - effect on program/benefit

COMPLAINTS RE: DISPARATE TREATMENT

1. Is person covered?
 - Includes individuals with a disability, with a "record of" and "regarded as."
 - Remember that perception of an illness is not enough to constitute being regarded as having a disability.
2. Was person treated differently than similarly situated non-covered individuals?
3. Was there a legitimate nondiscriminatory reason for the treatment?

COMPLAINTS RE: DISPARATE IMPACT:

1. Is person covered?
 - Same as disparate treatment
2. Does a policy or requirement screen out covered individuals?
3. Is there a legitimate nondiscriminatory reason for the policy or requirement?

Disability Data Elements

The following definitions of impairments are for purposes of data collection by the state *only*. While the definitions may be useful in determining if an individual has an impairment, the definitions do not determine any legal obligation MnSCU campuses may have under state or federal disability law. Students with an impairment are not covered by state or federal disability law unless they have an impairment which substantially limits a major life activity and are qualified students.

Learning Disability

Definition: Learning disabilities are neurologically-based conditions that interfere with the acquisition, storage, organization, and use of skills and knowledge. They are identified by deficits in academic functioning and in processing memory, auditory, visual, and linguistic information. The diagnosis of a learning disability in an adult requires documentation of a least average intellectual functioning along with deficit in one or more of the following areas:

- auditory processing
- information processing speed
- spoken/written language skills
- mathematical skills
- motor skills
- memory (long-term, short-term, visual auditory)
- visual processing
- abstract/general reasoning
- reading skills
- visual spatial skills
- executive functioning (planning)

Problems in self-regulatory behaviors, social perceptions, and social interaction may exist with learning disabilities but do not by themselves constitute a learning disability. Although learning disabilities may occur concomitantly with other handicapping conditions (for example, sensory impairment, mental retardation, and serious emotional disturbance) or with extrinsic influences (such as cultural differences, insufficient or inappropriate instruction), they are not the result of those conditions or influences.

Limited Vision

Definition: Students may have limited vision even with lenses if it limits their ability to see print. There are three degrees of vision loss:

1. *Visual Acuity of 20/200* (see definition of “Blind”);
2. *Low Vision* - limited or diminished vision that cannot be corrected with standard lenses; and
3. *Partial Sight* - the field of vision is impaired because of an illness, a degenerative syndrome, or trauma.

Blind

Definition: Students are considered legally blind when visual acuity is 20/200 or less in the better eye with the use of corrective lenses. The legally blind person can see at 20 feet what the average-sighted person can see at 200. Totally blind students may have visual memory, although its strength is dependent on the age the student lost his/her sight.

Deaf

Definition: The spoken word cannot be understood with or without the use of amplification.

Hard of Hearing

Definition: A varying degree of hearing loss in which the person must use visual as

Mobility Disability

Definition: An obvious physical disability that may require accommodation and assistance to access the educational setting. Mobility impairments range in severity from limitations in stamina to paralysis. Some mobility impairments are caused by conditions present at birth while others are the result of illness or physical injury. Examples may include quadriplegia, paraplegia, amputation, back disorder, arthritis, cerebral palsy, and neuro-muscular disorders.

Speech Disability

Definition: Speech impairments range from problems with articulation or voice strength to complete voicelessness. They include difficulties in projection, as in chronic hoarseness and esophageal speech; fluency problems, as in stuttering and stammering; and the nominal aphasia that alters the articulation of particular words or terms.

Systemic Disability

Definition: Systemic disabilities are conditions affecting one or more of the body's systems. These include the respiratory, immunological, neurological and circulatory systems. There are many kinds of systemic impairments, varying significantly in their effects and symptoms. Examples may include chronic fatigue syndrome, fibromyalgia, lupus, and multiple sclerosis.

Chemical Dependency Disability

Definition: Chemical dependency is a condition of physiological and /or psychological dependency on any of a variety of chemicals, such as illegal drugs, some prescription drugs and alcohol. Chemical dependency as used here, refers to people recovering and not currently using chemicals.

Psychiatric Disorder

Definition: A psychiatric disorder is defined by the Diagnostic and Statistical Manual of the American Psychiatric Association. Examples may include such disorders as major depression or bi-polar disorder.

ABI -Acquired Brain Injury/TBI -Traumatic Brain Injury Disability

Definition: Acquired Brain Injury (ABI) is an acquired impairment of medically verifiable brain functioning resulting in a loss or partial loss of one or more of the following: cognitive, communication, psychomotor, psychosocial and sensory/perceptual abilities. Brain injury can occur from two types of trauma: 1) external events, such as closed head trauma or gunshot, or other penetration missile wounds that penetrate the brain; or 2) internal events, such as cerebral vascular accidents, tumors, ingestion of toxic substances, hypoxia or

ADHD/ADD -Attention Deficit Hyperactivity Disorder/Attention Deficit Disorder

Definition: ADHD is a persistent pattern of inattention or hyperactivity/impulsivity manifested in academic, employment or social situations. It is marked in

school settings by careless mistakes and disorganized work. Students often have difficulty concentrating on and completing tasks, frequently shifting from one uncompleted activity to another. In social situations, inattention may be apparent by frequent shifts in conversation, poor listening comprehension, and not following the details or rules of games and other activities. Symptoms of hyperactivity may take the form of restlessness and difficulty with quiet activities. ADHD arises during childhood and is attributed neither to gross neurological, sensory, language, or motor impairment nor to mental retardation or severe emotional disturbance.

Mental Impairment

Definition: Mental impairment refers to limitations in present functioning. It is characterized by subaverage intellectual functioning, existing concurrently with related limitation in two or more of the following applicable adaptive skill areas: communication, self care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work. Mental impairment manifests before age 18. Mental impairments are classified according to the severity of the problems, and include those individuals who IQ is below approximately 70.

Several of the definitions have been taken or adapted with permission from Access for Students with Disabilities: Policies, Procedures and Resources, 1995, Disability Services, University of Minnesota.

FORMS

TENNESSEN WARNING

This notice is required by state law when an agency seeks to collect private or confidential data. The warning must include:

1. Why the data is being collected;
2. How the data will be used within the agency collecting the data;
3. Whether the individual can refuse or is legally required to provide the data being requested;
4. What the consequences are of either supplying or refusing to supply the information requested; and
5. Who will have access to the data provided?

SAMPLE TENNESSEN WARNING

STUDENTS

The College/University is asking you to provide information which includes private information under State and Federal law. The College/University is asking for this private information so that the College/University can process your request for supplemental services.

This information will be used to evaluate your request and to help the College/University determine whether you are eligible for services.

You are not legally required to provide the information the College/University is requesting and you may refuse to provide some or all of the information requested. However, the College/University may not be able to process your request if you do not provide sufficient information.

With some exceptions, unless you consent to further release of private information, access to this information will be limited to individuals involved in the supplemental services process. However, federal and state law do authorize release of private information without your consent to:

- ? other school officials, including faculty within the College/University, who have legitimate educational interests in the information;
- ? other schools in which you seek or intend to enroll, or are enrolled, if you are first notified of the release;
- ? the federal Comptroller General or other federal, state or local education officials for purposes of program compliance, audit or evaluation;
- ? as appropriate in connection with your application for, or receipt of, financial aid;
- ? the juvenile justice system, if you are a juvenile, and the information is necessary, prior to adjudication, to determine the juvenile justice system's ability to serve you;
- ? an alleged victim of sexual assault, if you are the alleged perpetrator of the assault, and the release is of the results of a disciplinary proceeding against you related to the alleged crime;
- ? your parents, if your parents claim you as a dependent student for tax purposes;

- ? a court, grand jury, or state or federal agency, if the information is sought with a subpoena;
- ? an institution engaged in research for an educational institution or agency related to testing, student aid, or improved instruction;
- ? an accrediting organization in connection with its accrediting functions;
- ? appropriate persons in connection with an emergency, if necessary to protect your health or safety or the health or safety of others;
- ? if required by a court order, or permitted by other state or federal law.

SAMPLE INFORMATION FOR STUDENTS

NOTE: This sample was based on the "Resource Guide for Students with Disabilities" which was developed by the Program Access Subcommittee of the University of Colorado at Denver. If you use this sample or something similar on your campus, please give credit to the University of Colorado.

Dear Students:

Students with disabilities, who are making a transition to the college or university setting, may face increased responsibilities. You may previously have had significant assistance from family members and others in obtaining services. In the college or university environment, you may be requesting assistance for yourself for the first time. In so doing, you may be discussing very personal information with strangers. While such situations may be uncomfortable at first, you can make them a positive part of the educational environment in which you become your own best advocate.

Because part of the advocacy process is communication, and because it is a major key to the success of your education, you should do the following:

- ? Make an appoint with the _____ to provide appropriate documentation regarding your disability and to request classroom accommodations before classes begin.

Documentation of a disability provides the following:

- ? identification of the nature and extent of the disability which the student has,
- ? specific information regarding the manner in which the disability affects the student,
- ? description of the current course of treatment, if any, including medications and side effects,
- ? prognosis for the disability in the student, and
- ? suggestions regarding possible accommodations.

REASONABLE ACCOMMODATIONS CAN BE PROVIDED ONLY AFTER APPROPRIATE DOCUMENTATION HAS BEEN RECEIVED AND REVIEWED BY THIS OFFICE AND DISCUSSED WITH YOU.

- ? Use this office as a resource. Staff members are trained to work with you, particularly in assessing your needs and developing reasonable accommodations.

- ? Make timely appointments with this office to discuss any accommodations you need. Adequate lead-time is important. For example, adequate lead-time is particularly important if you will need course materials in an alternative format.
- ? Request syllabi and lists of course materials significantly in advance of the beginning of your class/es so that you can determine whether any materials will require an alternative format.
- ? Keep this office informed about any physical and/or attitude barriers you encounter so that we may help you to resolve them. Suggestions for solutions will be appreciated.
- ? Meet reasonable deadlines established by the administrative offices for submission of medical documents, requests for special accommodations and arrangements and for the completion of course work and examinations.
- ? This office is here to help, but you should know that there are also other resources on campus available to you. If you should encounter difficulty and wish to seek other resources on campus, you may contact:

Counseling:

Complaint person:

Dean:

Further information regarding reasonable accommodations:

The basic principles of reasonable accommodation are as follows:

1. A qualified individual with a disability **MUST REQUEST** reasonable accommodations, if s/he wants one. There may be times when an individual with a disability does not want to be accommodated. Therefore, it is vital to ensure proper service, that the individual initiates this process. In addition, the individual, where appropriate, must periodically renew a request. For example, each semester, students with disabilities will be asked to confirm for which classes they are requesting an accommodation.
2. The reasonable accommodation obligation is prospective, not retroactive. There is no obligation to provide accommodation until a request for accommodation is made.
3. An employer or program provider must consider the accommodation requested by a person with a disability. An employer or program provider does not have to provide the specific accommodation requested by the person with a disability if there is another equally effective, less expensive accommodation.

4. Reasonable accommodation must be determined on a case-by-case basis. A reasonable accommodation is individualized. What is a reasonable accommodation for one person with a disability may not work for another person with the same disability. Feedback, therefore, is very important as well as your continued cooperation with this office.
5. The reasonable accommodation obligation applies only to accommodations that reduce barriers to employment or participation in programs, services, and activities related to a person's disability. It does not apply to accommodations that a person with a disability may request for some reason other than the disability or that do not reduce the specific barriers to employment or program participation.
6. A reasonable accommodation need not be the best accommodation available, as long as it is an effective accommodation.
7. An employer or program provider is not required to provide an accommodation that is primarily for personal use. However, an employer or program provider may do this at times because it is to the employer's or program provider's benefit to do so.
8. The ADA's requirements for certain types of adjustments and accommodations to meet its reasonable accommodation obligations do not prevent an employer or program provider from providing accommodations beyond those required by the ADA. The institution which provides these accommodations beyond the requirements of the law is not, however, obligated to continue to provide these services.
9. An employer or program provider is only obligated to make an accommodation to the known limitations of a qualified individual with a disability. "Known limitations" are those which are obvious, suspected, or disclosed by the person with a disability.
10. A person cannot be forced to accept an accommodation s/he does not want.
11. A reasonable accommodation will not be provided where: a) there would be a direct threat to the health and safety of others; b) there would be substantial change in an essential element of the curriculum or a substantial alteration in the manner in which services are provided; or c) there would be undue financial or administrative burden or hardship.
12. Reasonable accommodations do not include tolerating misconduct. Individuals with disabilities (whether employees or participants in the institution's programs) must meet the institution's expectations and standards of conduct and performance.

EXAMPLE OF ADA POSTED NOTICE

NOTICE TO THE PUBLIC

It is the policy of [institution] to comply with the provisions of the Americans with Disabilities Act, 42 U.S.C.A. Section 12101 et. seq. ("ADA"). The ADA prohibits discrimination against qualified individuals with disabilities on the basis of their disability. The ADA provides, in part, that qualified individuals with disabilities shall not be excluded from participating in or be denied the benefits of any program, service or activity offered by this institution.

The ADA requires that all programs, services and activities, when viewed in their entirety, are readily accessible to and usable by qualified individuals with disabilities. This institution must communicate effectively with individuals with speech, visual, and hearing impairments and provide auxiliary communication aids to qualified individuals with disabilities participating in or benefiting from this institution's programs, services or activities to afford equal opportunity.

Should you wish to review the ADA or its interpretative regulations, ask questions about your rights and remedies under the ADA, request a reasonable modification to this institution's policies, practices or procedure, or file a written grievance with this institution alleging noncompliance with the ADA, please contact the institution's Designated Officer for the ADA as listed below:

Name:

Address:

Telephone numbers:

SUGGESTED NOTICES

Example one regarding alternative formats:

This document can be made available in alternative formats, such as large print, Braille or audio tape, by calling _____ (voice) or _____ (TTD/TTY).

Example two regarding phone communication:

If you use a TTY, you can call us using the Minnesota Relay Service.

Example Three regarding phone communication if your campus has a TTY:

You can also call us using a TTY by contacting _____ (TTD/TTY).

Example four regarding need for accommodation:

If you need an accommodation for a disability (i.e., sign language interpreter, Braille, wheelchair accessibility, etc.), please call to request an accommodation as soon as possible _____ (voice) or _____ (TTD/TTY). Certain accommodations such as sign language interpreters require advance notice in order to provide adequate time to respond.

INTAKE FORM

This document can be made available in alternative formats by contacting Disability Access Services at _____ (voice) or _____ (TTY).

LETTER TO PHYSICIAN REGARDING STUDENT

Dear Dr. _____:

_____ enrolled at _____ College/University in _____ and is currently at student. General student activities include: _____. In addition, your patient has expressed an interest in the _____ program which includes the following activities: [give description of educational requirements generally and for specific programs including any physical requirements]. Your patient has registered with our office in order to receive accommodations and has discussed with us the following concerns: [Describe any discussion with the student/patient regarding his/her condition and the effect that his/her condition has had on academic performance].

These discussions have prompted me to contact you to obtain more detailed information with regard to [student/patient's] medical condition and ability to meet the essential eligibility and academic requirements of the college's/university's educational programs. Attached for your information is a signed Release authorizing you to provide us with medical records and to speak directly to us. Also attached is a copy of the description of our academic programs.

We are looking for information which is as detailed as possible with respect to [student/patient's] functional capabilities. In particular, we need to know:

- ? Does [student/patient] have a physical or mental condition which substantially limits one or more of his major life activities? Which activities are affected and what is the condition, manner or duration in which they are affected? In addition, please provide answers to the following: What is the nature and severity of the condition; how long will it last or is expected to last; what is the condition's permanent or long term impact, or expected impact.
- ? Based on the description of the academic program, discussions with [student/patient] and discussions with us, will he have difficulty in meeting the eligibility requirements and academic requirements? If so, which? If so, what kind of difficulty and to what degree?
- ? If [he/she] will have difficulty in performing one or more of the requirements, are there ways in which the requirements might be modified to allow him to meet these requirements? If restrictions exist, how long do you anticipate these restrictions to last?

[Describe the current status of the student/patient with respect to his/her studies]. Accordingly, we are urgently in need of a response.

Please provide me with a written response by [give deadline]. If a complete response is not possible by then because of time constraints, please call me to discuss a more appropriate timetable. In addition, do not hesitate to call to discuss the nature of this request or [student/patient's] academic studies in more detail.

Thank you.

Dear _____:

I am the Director of _____ college/university _____ office. My office is responsible for processing requests for accommodation.

_____ office received the enclosed documentation from you. Because all requests for accommodation must be processed through this office, and because it is unclear whether in fact you are requesting an accommodation, I am returning the documentation to you.

If you need accommodation, please come to my office at your earliest convenience so that we may obtain the necessary information from you and begin the process. I have enclosed information about our office, our accommodation process and our intake form. Please note that the college/university cannot accommodate you unless you have processed your request with this office.

My number is _____. Please feel free to call me. The office is open _____. I look forward to working with you.

_____ has forwarded to me the documentation you provided because this office has primary responsibility for processing requests for accommodation. If you need accommodation, please make an appointment with me at your earliest convenience so that we may begin to process your request.

I have enclosed documentation about our accommodation policies and procedures and an intake form. Please note that the college/university cannot provide accommodation unless you have processed your request with my office.

My phone number is _____. I look forward to working with you.

RESOURCES AND ORGANIZATIONS/DISABILITIES

GENERAL

Job Accommodation Network
1-800-526-7234

National Rehabilitation Ass'n (NRA)
633 Washington Street
Alexandria, VA 22314
(703) 836-0850 (Voice)
(703) 836-0852 (TDD)

Call for information regarding job placement, rehabilitation counseling, rehabilitation administration, vocational education and work adjustment.

ADA HOMEPAGE

www.usdoj.gov/crt/ada/adahom1.htm

President's Committee on Employment of People with Disabilities
1111 20th Street, N.W., Suite 636
Washington, D.C. 20036
(202) 653-5073
Public Affairs Office
(202) 653-5044
(202) 653-5050 (TDD)

Windmills Program
Milt Wright & Associates, Inc.
19151 Parthenia Street, Suite D
Northridge, Ca 91324
(818) 349-0858

This program provides training for non-disabled individuals in dealing with individuals with disabilities.

Worklife Magazine
(202) 653-5044

MAKING FACILITIES READILY ACCESSIBLE

American Institute of Architects (AIA) - c/o Information Center
1735 New York Avenue, N.W., Washington, D.C. 20006
(202) 626-7493

Architectural and Transportation Barriers - Compliance Board
1111 18th Street, N.W., Suite 501, Washington, D.C. 20036-3894
(202) 653-7834 (Voice/TDD) - (202) 653-7848 (Voice/TDD) (Technical Services)

Association of Physical Plant Administration (APPA)
1446 Duke Street, Alexandria, VA 22314
(703) 684-1446

RESNA - Association for the Advancement of Rehabilitation Technology
1101 Connecticut Avenue, N.W., Suite 700, Washington, D.C. 20036
(202) 857-1199

EDUCATION

AHEAD
P.O. Box 21192, Columbus, Ohio 43221-0192
(614) 488-4972 (Voice/TDD)

Education Resource Information Center (ERIC) Clearinghouse
Ohio State University
1200 Chambers Road, Room 310, Columbus, Ohio 43212
(614) 292-6717

Edutech - JWK International
7617 Little River Turnpike, Annandale, Virginia 22003
(703) 750-0500

Provides technical assistance regarding use of technology in special education.

Health Resource Center-One Dupont Circle, #800, Washington, D.C. 20036-1193
(202) 939-9320/(800) 544-3284

TECHNICAL

American National Standards Institute - ANSI
1430 Broadway
New York, New York 10018

(212) 354-3300

Apple Office of Special Education Programs - Apple Computer
20525 Mariana Avenue, MS23D, Cupertino, California 95014
(408) 974-7910

Clearinghouse On Computer Accommodation (COCA)-GSA Central Office
18th and F Street, N.W., Room 1213, Washington, D.C. 20405

IBM National Support Center for Persons with Disabilities
P.O. Box 2150, Atlanta, Georgia 30055
(800) IBM-2133 (Voice/TDD)

Materials Development Center (MDC), Stout Vocational Rehabilitation Institute
University of Wisconsin - Stout, Menomonie, Wisconsin 54751
(715) 232-1342

RESNA
1101 Connecticut Avenue, N.W. - Suite 700, Washington, D.C. 20036
(202) 857-1199

CAMPUS SPECIFIC PROCEDURES

If your campus has specific procedures regarding the following, please attach them to this reference guide:

1. How to obtain sign language interpreters
2. Where are the TTD/TTY's located on this campus?
3. How can materials be produced in Braille?
4. How are materials reproduced as taped texts?
5. How can a reader, notetaker or tutor be obtained?
6. How can open or closed captioned tapes be obtained?

AHEAD – Guidelines for Learning Disabilities

Go to: www.ahead.org/ldguide/htm