



Section 504 in the College Setting

GUAM LEGAL SERVICES CORPORATION-
DISABILITY LAW CENTER (GLSC-DLC)

“THE PROTECTION & ADVOCACY SYSTEM FOR GUAM”

Daniel Somerfleck, Executive Director

This Presentation Will Cover

- ❑ About GLSC-DLC
- ❑ Evolution of § 504
- ❑ Student Disability Services
- ❑ Students' § 504 Duties
- ❑ GCC's § 504 Duties
- ❑ Violations
- ❑ Admissions
- ❑ Housing
- ❑ Financial Aid
- ❑ Sports & Physical Education
- ❑ Counseling
- ❑ Employment
- ❑ Accommodations
- ❑ Provisions Favoring Universities
- ❑ Discipline
- ❑ Guidelines

About GLSC-DLC

- A private, non-profit organization established in 1979
- Began operations in 1981
- Re-designated Protection & Advocacy (P&A) in 1999
- Not part of the Government of Guam or the Federal Government
- 9 Federally funded programs and court appointments
- P&A Programs exist throughout the nation

Mission Statement

“To promote, educate, and advocate for equal rights and access to justice for our underserved communities”

Population served:

- Individuals with Disabilities
- Victims of Violence
- Court Appointed Cases (Guardian Ad Litem)



Protection & Advocacy (P&A) Mandates

- Mandated under applicable federal and local laws to promote and protect the civil, legal, and human rights of individuals with developmental, physical &/or mental disabilities through legally based advocacy
- P&A Program in every state and territory

Overview of the Protection & Advocacy (P&A) Network

The P&A Network is the nation's largest provider of legally based advocacy services for people with disabilities.

There are P&As in all 50 states and territories (American Samoa, DC, Guam, Northern Marianas Islands, Puerto Rico, and the US Virgin Islands). There is also a Native American P&A.

All P&As work to monitor, investigate, and attempt to remedy adverse conditions in large and small, public and private facilities that care for people with disabilities.

P&As promote full integration of people with disabilities

Protection & Advocacy (P&A) Programs

PAIMI

Protection and Advocacy for
Individuals with Mental Illness

PADD

Protection and Advocacy for
Individuals with Developmental
Disabilities

PAIR

Protection and Advocacy for
Individual Rights

PAAT

Protection and Advocacy for
Assistive Technology

PAVA

Protection and Advocacy for Voter
Access

PATBI

Protection and Advocacy for
Traumatic Brain Injury



PABSS

Protection and Advocacy for
Beneficiaries of
Social Security
&
Strengthening Protections for
Social Security Beneficiaries



Examples of Cases

- Protection from Abuse & Neglect
- Special Education
- Disability Discrimination
- Accommodations
- Employment Discrimination
- Transportation
- Housing
- Program Access
- Public Benefits
- Health Care
- Power of Attorney
- Legal Guardianships over Adults
- Social Security Denial

P&A Remedies

- Investigation of Abuse and Neglect
- Individual Litigation
- Systemic Litigation and Advocacy
- Negotiation and Mediation
- Administrative Proceedings
- Monitoring
- Legal Counsel and Advice
- Information and Referrals
- Outreach to Underserved Communities
- Training

§ 504 of Rehabilitation Act of 1973

- Is Civil Rights law, says College must provide **reasonable accommodations** or may lose federal funding via OCR
104.41

- § 1983 U.S.C. History

- § 504 is larger than IDEA, but just as strong

To Qualify: a mental or physical impairment that **substantially limits a major life activity**

eating, sleeping, standing, lifting, bending, reading, thinking, communicating, concentrating, cancer, anemia, lupus, even if in remission

Disabilities Reported by College Students

In 2022, the American College Health Association (ACHA) surveyed 54,000 undergraduates. It found:

- 15% of students reported having attention-deficit/hyperactivity disorder (ADD or ADHD).
- 5% had a learning disability.
- 4% were blind or had low vision.
- 3% were autistic.
- 2% were Deaf or hard of hearing.
- About 1% had a mobility or dexterity disability.
- About 1% had a speech or language disability.



Most Students Don't Report Their Disability to Colleges

- Department of Education (ED) research found that only 37% of students with a disability reported their disability to their college.
- Additionally, a Mental Health America survey of 471 college students with mental health disabilities found that 70% didn't register for accommodations from their school.
- These students reported
 - not believing they were sick enough (41%),
 - not knowing accommodations existed (33%),
 - and being afraid to talk to professors about accommodations (26%).

Source: NCES

Student Disability Services

- Partially ameliorates professors' stance
 - (104.44: profs must modify, and adapt the manner of instruction)
- Reviews docs, determines accommodations
- Recommends to dean course substitutions

Students' Duties

- Request change of modification
- Self-Advocate Confidently
- OCR (Office of Civil Rights) 180-day complaint deadline
- Present Disability Documents & Specific Proposed Accommodations in Writing to Professor & GCC Office of Accommodations



GCC's § 504 Duties

- File Assurance of Compliance (w/ OCR)
- Notice to applicants of no discrimination
- Compliance Coordinator
- Self-Evaluation
- Voluntary Corrective Action
- Grievance Procedures
- Good Faith In Late Diagnosis Assessment
- Final Exams Reflecting Achievement, Not Impaired Sensory/Speaking Skills
- All Programs: Most Integrated Setting
- Timely Provision of Accommodations



104.43

Smith v. State Univ. of New York (1997)

Gray Area: Duty to Investigate

PRO-UNIVERSITY

*Ohio Civil Rights Comm'n
v. Case Western Reserve
Univ. (1996)*



PRO-STUDENT

If the student can prove disability, GCC must **explore** alternative accommodations

Otherwise, the accommodations mandate is **meaningless**

Nathanson v. Medical College of Penn. (1991)

Violations

- Actionable under § 504:
- Discrimination
- Harassment
- Constructive Dismissal
- Retaliation
- Rules Prohibiting Certain Accommodations
- Charging Extra for Accommodations



- *Doe v. Marshall* (1995)

Kapiolani Community College (1997)

Ostrach v. Regents of the University of California (1997)

Rothman v. Emory University (1997)

Wood v. President & Trustees of SpringHill College (1992)

Admissions

- May not **unnecessarily delay** (require excessive/redundant docs)
- If **holistic** approach, courts give deference
- May not deny admission on **assumption of inability**
- **Probationary** admission ok if accommodations given while earning transition
- Individualized assessment
- No **proportion limit** ('quota')
- Cannot deny **recruitment** 104.42

Admissions Tests

- No **disproportionate adverse effect** on individual with disability (unless **validated** and **no alternate** available) 104.42
- **Accessible** facilities 104.42
- For impaired sensory/manual/speaking, offered **just as often** 104.42
- May not **ask** if applicant is disabled (but *can* ask after if for remedial action) 104.42

Housing

Must provide **comparable, convenient, accessible** housing & scope at **same cost** 104.45



Financial Aid

- May not provide **less** financial aid **based on disability**
104.46
- May administer scholarships arising under **will/trust** if no
discrimination in *overall effect* 104.46



Sports & Physical Education

Must provide **equal chance** to participate in Physical Education and intercollegiate club/intramural sports 104.47

May offer **separate** P.E./athletics only if still given equal chance to participate in **regular**

104.47



Counseling

Must give **just as much** personal/academic/ vocational counseling 104.47

May not counsel student with disability toward more **restrictive careers** than similarly-interested non-disabled students 104.47



Fraternities & Sorority

If significant assistance, must ensure no discrimination based on disability



Employment

Can only **employ**/assist job agency if job availability does not discriminate
104.46



Provisions Favoring Universities

No duty to **pay** for evaluation to document disability

No duty to provide **personal devices/services** (e.g. Personal Care Attendant)

No duty to eliminate record of **test failure** if accommodation request came **after** failure

Unreasonable: anxiety disorder, requested isolation room, excuse from socials, bring friend to class. → **distance** learning ok

Discipline

Violate **criminal** law or college **code of conduct** = discipline ok, unlike IDEA (Individuals with Disabilities Education Act)

Failure to meet **grade requirements** = dismissal ok

Guidelines for Universities

Publish disability documenting guidelines

Review financial aid/academic/discipline practices

Review admissions for **unnecessary delay**

Reasonable effort abreast of **new technologies** & instructional **methodologies**

Employ disability assessment/law **expert** at Student Disability Services

Guidelines for Universities (continue)

Sufficiently **fund** and **staff** SDS

In-house training of admin and professors

Periodically assess buildings for **accessibility**

Handle accommodation requests **timely**

Investigate noncompliance allegations **promptly**

Examples of OCR Settlements

A university established a pilot program to provide students with e-book readers to be used in class and to use with the textbook. The e-books were inaccessible to blind students and there were no alternate formats. After OCR and DOJ began to investigate, the school agreed to use the e-readers only if they were accessible to students with visual impairments or to provide equal, alternative access to the same information.

Examples of OCR Settlements

A student in an online math class could not use his accommodation, extra testing time, on online tests. The software did not allow for untimed testing. The professor would have to spend 50 minutes converting each test into a format that worked for untimed situations. The college required the student to come into the testing center and take the test on paper at certain times, whereas, other students could take the tests online anywhere during a 48-hour period. OCR investigated and said that the accommodation was not an undue burden. The college reimbursed the student for the class and agreed to provide training on the law to its staff.

Examples of OCR Settlements

An HIV-positive student was dismissed from his medical office technology program. The college had safety concerns about a course that required students to draw blood from one another. After OCR involvement, the school allowed the student to re-enroll and agreed to consider his accommodation requests.

Statute

Section 504 of the Rehabilitation Act

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

“Individual with a disability”—same definition as ADA

Treatment of students; general. (34 C.F.R. § 104.43)

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services to which this subpart applies.

Definitions

“Qualified handicapped person means:

. . .

(2)With respect to postsecondary and vocational education services, a handicapped person who meets the **academic and technical standards** requisite to admission or participation in the recipient’s education program or activity.”

34 C.F.R. § 104.3(l)(3)

Case Examples re: meeting the definition of “Qualified”

Southeastern Community College v. Davis:

Supreme Court case (1979) where a deaf LPN, academically qualified, was denied admission to an RN nursing program.

She could not perform successfully in a surgical setting because she could not read lips covered by a surgical mask.

She asked that she not be required to take clinical courses and a full-time supervisor to be assigned to her.

Southeastern Community College v. Davis

Court held that Section 504 (and ADA) does not require colleges to ignore functional limitations associated with a disability to the extent those limitations impact the applicant's ability to perform essential or fundamental skills, especially those related to safety.

You must take reasonable accommodation into account before defining qualification

As long as the reasonable accommodation is not a **fundamental alteration** (unsafe, lowers academic standards, defeats the purpose of the program, or is in direct conflict with state licensing requirements.)

Case Examples re: meeting the definition of “Qualified.”

However, a traditional standard is not inherently fundamental.

What is fundamental today might not be fundamental tomorrow (technological advances).

Palmer College of Chiropractic v. Davenport Civil Rights Commission et al. (S. Ct. of Iowa, 2014)

An academically successful chiropractic student, blind since birth, was put on notice by the college that he could not advance beyond the 4th trimester because he could not read x-rays.

Palmer College of Chiropractic v. Davenport Civil Rights Commission et al.

College said that use of a “sighted assistant” to read x-rays was a fundamental alteration.

Civil Rights Commission found discrimination and said Palmer failed to engage in an interactive process, denied a reasonable accommodation, and gave the student monetary and injunctive relief.

S. Ct. held that academic deference should not be given where a college fails to demonstrate a diligent search for and consideration of available or proposed modifications on an individualized basis.

Palmer College of Chiropractic v. Davenport Civil Rights Commission et al.

Palmer college had graduated two blind students in the past, and its affiliate had modified or waived similar technical requirements for other blind students.

Palmer provided no proof that the student could not obtain a license or Palmer would lose its accreditation if it provided this accommodation.

X-ray reading was not fundamental.

(The student met the definition of “qualified.”)

“Reasonable Accommodations” is Not the Regulatory Term or Standard

The term “reasonable accommodation” is a misnomer. It is an employment discrimination term. It does not apply to students.

For students with disabilities:

- “Academic adjustments”: (§ 104.44(a)): modifications such as extra-time on exams, or a reduced course-load.
- “Auxiliary aids”: (§104.44(d)): taped texts, interpreters, assistive technology.

Reasonable Accommodation Definition

Reasonable Accommodation means something necessary and effective to enable a student with a disability to have the same opportunity to meet the academic and technical requirements of the recipient's programs and activities as nondisabled students.

The statute says, "A recipient . . . shall make such modifications to its academic requirements as are **necessary** to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student." § (104.44(a)).

Reasonable Accommodation Definition

Necessary does not mean that without it, it is impossible for the student to participate in the program, but that it provides an equal opportunity or “meaningful access” to participate in the program or activity.

Reasonable accommodation may require an exception to a long-existing, written, consistently-followed rule.

Nothing is inherently exempt from the duty to accommodate.

Academic Deference Standard

Enunciated in *Wynne v. Tufts Univ. School of Medicine* (1st Circ. 1991): Medical student had a learning disability and wanted accommodation to not take multiple choice tests. Ultimately, the school won.

Schools have academic deference but have the duty to show that relevant officials . . . considered alternative means, their feasibility, cost and effect on the academic program, and came to a rationally justifiable conclusion that the available alternatives would result either in lowering academic standards or require substantial program alteration.

But Academic Deference might be less automatically granted: *Argenyi v. Creighton University*

Argenyi is a medical student with bilateral cochlear implants who relied on cued speech.

In 8th grade, he began using Communication Access Real-Time transcription (CART). He graduated from Seattle Univ. with a 3.87 gpa.

He applied to the university, who offered FM system, notetakers, powerpoints, front of class seating, and interpreters.

Student paid for CART on his own at \$130.

Lessened Academic Deference: *Argenyi v. Creighton University*

Fed. Dist. Ct. Nebraska (2011) granted summary judgment for University, that CART wasn't "necessary," and gave considerable deference to the school.

8th circuit reversed. Said "necessary" is a relative term, doesn't mean you will otherwise flunk out. Argenyi and his doctor know best. Sent case to a jury.

Jury found for Argenyi, and that it was not an undue burden for the school to provide CART.

Argenyi can have CART in classes, and CART and oral interpreters in small group and clinical settings.

No reimbursement for his \$130 CART expenses though.

Common Accommodations

Large print

Braille

Additional time

Oral instruction

Readers

Peer tutoring

Taped texts

Untimed tests

Priority or early registration

Reduced course load

Course substitution

Note taker

Recording devices

Sign language interpreters

TTY in dorm

Computers w/ screen-reading, voice recognition, adaptive software

Priority seating

Adapted teaching manner

104.44

* Need not give advantage

Acceptable College Accommodations

Computer Access

- Alternative mouse device
- Alternative keyboard
- Text-to-speech application
- Speech recognition software

Lecture

- Sign language interpreter
- Note taking assistant
- Digital recorder
- FM listening device
- Computer for note taking
- Real-time captioning

Personal Organization

- Talking watch
- Print or picture schedule
- Voice output reminders for tasks/assignments

Studying/Learning

- Personal data assistants
- Graphic organizer software
- Digital recorder
- Software for idea organization
- Computer files provided by professor

Acceptable College Accommodations

Test-Taking

Extended time
Low-distraction test environment
Repeated instructions
Oral testing
Use of computer in class
Break time during testing

Math

Talking calculator
Accessible math software
Calculation chart
Graph paper
Visual graphing software

Reading

Audio book
Large-print/Braille material
Computer Braille display
Text-to-speech app
Scan-and-read software & pen
Screen magnifier

Writing

Computer/portable word processor
Electronic spellchecker & dictionary
Slant board
scribe

What are Unreasonable Accommodations?

A fundamental alteration or lowering of academic standards

An undue burden

Personal services or devices

An accommodation that defeats necessary skill progression

A direct threat to the health and safety of others

Universal Design, Best Practices in Teaching Strategies

Students with disabilities aren't the only students who find some teaching methods inaccessible

Teachers are encouraged to spread the innovations made to help students with disabilities to all students.

This diminishes isolation and stigma for students with disabilities.

Universal Design Examples

Required text: select a text that has a study guide, free online resources, and is available in multiple formats.

Before the lecture:

- Write key terms on an outline on the board, or prepare a lecture handout available before class.
- Have all lectures on PowerPoint & available before class.
- Create study guides
- Assign advance readings before the topic is discussed in the class session
- Give students questions that they should be able to answer by the end of each lecture.

Universal Design Examples

During the lecture

- Use visual aids like overheads, diagrams, charts, graphs
- Record the lecture and make it available to all
- Emphasize important points, main ideas, key concepts
- Face the class when speaking
- Explain technical terms
- Speak distinctly at a relaxed rate, allowing time for note-taking

Universal Design Examples

- Leave time for questions periodically.
- Administer frequent quizzes to provide feedback for students.
- Give assignments in writing as well as orally.
- Start each lecture with a summary of the material to be covered and a summary of major points to be addressed.

Universal Design Examples

Include guest lecturers who are deaf, blind, mobility impaired, or intellectually impaired.

Include guest lecturers who approach the profession from a wide variety of viewpoints (government, non-profit, solo practice or big firm).

For large projects or papers, allow students to submit early drafts, or break down the tasks into smaller parts for feedback.

For grading, have various tasks weighted differently.

Questions?



Thank You!

Contact Us

- Hours: 8am – 5pm, Monday – Friday
Closed on Holidays
- 434 West O'Brien Drive Suite 102 Hagatna
Across Julale's Shopping Center
- Tel: 477-9811 Fax: 477-1320 TDD/TTY: 477-7356
- Email: information@guamlsc.org
- Website: www.guamlegalservices.org