



Association of
Title IX Administrators

Vassar College 504/ADA Compliance Essentials February 25, 2025

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Introduction to Core Concepts

Section 504, Americans with Disabilities Act, and Other Disability Laws

Core Concepts

- The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (504) are designed to provide qualified individuals with a disability an **equal opportunity to access programs and activities, not to ensure equal results**
- Institutions may provide an available and equally effective, different or separate benefit or service than one that is requested
- **Universal design** aims to make products, environments, and systems accessible and usable by all people, to the greatest extent possible, without the need for adaptation or specialized design, regardless of their age, size, or ability
- **The interactive process is key**

Who is a Qualified Individual with a Disability Under Section 504/ADA?



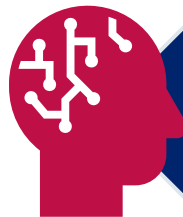
Has a Physical or Mental Impairment

- Which substantially limits one or more major life activities



Record of Having an Impairment

- Mental or physical



Regarded as Having an Impairment

- Mental or physical

Four Key Laws to Know

Section 504 of the
Rehabilitation Act

Fair Housing Act

Americans with
Disabilities Act

New York State Law

Section 504 of the Rehabilitation Act (1973)

- **Prohibits discrimination** on the basis of disability in **all programs or activities** that receive federal financial assistance
- Forbids institutions from excluding or denying individuals with disabilities an **equal opportunity** to receive program benefits and services
- Enforced by the U.S. Dept. of Education's Office for Civil Rights (OCR)

Americans With Disabilities Act (1990)

Title I, Title II, and Title III

Title I

Prohibits discrimination on the basis of disability in **employment**

Title II

Prohibits discrimination on the basis of disability by **public entities, including public institutions**, regardless of whether they receive federal financial assistance

Title III

Prohibits discrimination on the basis of disability in **private education facilities and in the activities of places of public accommodation**

Section 504 vs. ADA

- Between the two laws, all government-funded programs are covered

Section 504

- Created to protect individuals with disabilities from discrimination for reasons related to their disabilities
- Applied protections to programs or businesses that receive federal funds

ADA

- ADA Titles I-III strengthened 504 by:
 - Requiring accommodations for individuals with a disability
 - Extending it to private institutions, workplaces, and to state and local government-funded programs

Fair Housing Act (FHA)

- Language of the law applies to “dwellings,” including housing operated by colleges and universities
- FHA makes it unlawful to discriminate on the basis of disability in dwellings
- Enforced by the U.S. Department of Housing and Urban Development (HUD)



State Law

- States also typically have laws that address and prohibit discrimination on the basis of disability
- ATIXA recommends consulting with local legal counsel
- It is important to be familiar with the intersection between state laws and the institution's grievance procedures



Roles and Responsibilities

ADA/504 Coordinator vs. Disability/Accessibility Services Coordinator

ADA/504 Coordinator Role and Responsibility

- Primary Grievance Officer for disability related accommodation challenges and discrimination grievances
- Publish non-discrimination notice
- Train faculty and employees regarding ADA and 504
- Oversee the grievance process
- Investigate grievances
- Should not serve as the Disability/Accessibility Services Coordinator
- Can be the same person as the Title IX Coordinator (TIXC)

Disability/Accessibility Services Coordinator

- Primary administrator that oversees disability verification and addresses accommodation requests
- Verify accommodation intake requests
- Identify appropriate accommodations
- Liaise with faculty, staff, and supervisors
- Should not serve as ADA/504 Coordinator

Intersection with Other Institutional Standards

Important Intersections

- **Students** are responsible for meeting:
 - Academic and technical standards
 - Student conduct standards
- **Employees** are responsible for meeting:
 - Employment essential job functions
 - Employee conduct standards
- **Reasonable accommodations should not change these core standards**



Academic and Technical Standards

- Institutions need clear, operationalized standards for academic programs
 - Reflected in the syllabus as goals and learning outcomes
- All students need to be aware of standards prior to program admission
- All students are held to defined standards



Conduct Standards

- Applicable to student or employee issues
- Hold individuals accountable:
 - Apply the applicable conduct code, regardless of disability related issues
 - Early conduct meetings and interventions for low-level violations will help mitigate escalation and promote accountability and behavior change
 - Adjust sanctions to match the situation and document accordingly

Essential Job Functions (Employees)

- Typically applied to employees, but can apply to student employees
- Detail in written job description
- Create distinction between “essential job functions” and “marginal job functions” in the job description
- Employers must discern whether reasonable modifications enable an employee to complete essential job functions



Accommodation Process Overview

Process Overview

- Institution receives accommodation request from student or employee
- Individual provides required **documentation** of diagnosis and impact on major life activity from health care provider to establish disability
- Individual discusses functional limitations and barriers presented by disability
- Institution engages in **interactive process** to establish reasonable accommodations



Documentation

- Typically comes from student/employee's medical or mental health provider, or another relevant clinician
- Should provide needed information on the diagnosis and nature of the substantial limitation on a major life activity
- May require follow-up with clinician with student/employee written consent
- May help disability/accessibility services staff analyze and resolve any disagreement between the institution and individual about a specific accommodation request



Documentation Review

- Disability/Accessibility Services Coordinator typically reviews documentation
- **Review includes:**
 - Document(s) that describe(s) the nature of the disability
 - Documentation of the underlying impairment
 - Identification of functional limitations and barrier(s) resulting from disability
 - Accommodations needed
- Allows institution to evaluate what accommodations may be necessary



Interactive Process

- ***The interactive process*** is to determine whether a student is an individual with a disability, needs accommodation(s), and what those accommodations might be (as proposed by the student, or DSS), selecting the accommodations and arranging for their implementation
- Always a **case-by-case assessment**
- Back-and-forth communication with the individual to “get it right”
- May put same/typical accommodations in place for like situations, but always **remain flexible** and **follow interactive process each time**



More on the Interactive Process

- “Schools are obliged to carefully weigh whether requested accommodations are ‘feasible’ and ‘effective.’
- The communication element is a mutual responsibility
- Good faith participation by either party may well be an element for a court to consider
- This may be an on-going process, dynamic process, where persistence in looking for accommodations that work or alternative accommodations pays off for the college

What is an Adequate Interactive Process?

- Reviewing requests and working through the interactive process can be quick or might take some back-and-forth
- Disability/Accessibility services staff may need to work with other staff, supervisors, and faculty to determine possible accommodations
- Institution not required to adopt a specific requested accommodation if institution provides an equivalent alternative
- Accommodations must be provided in a timely and prompt manner
- Documentation of each step of the interactive process is key

Other Considerations

Institutions are not required to provide:

- Personal devices, such as wheelchairs
 - Individually prescribed devices such as hearing aids
 - E-readers for personal use or study
 - Services of a personal nature including assistance in eating, toileting, or dressing
-
- Institutions **should not prevent the use of these aids**



Key Exceptions

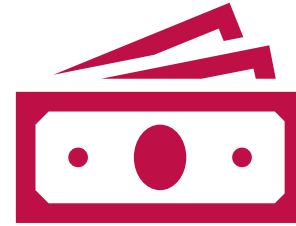
Fundamental Alteration and Undue Burden

Key Exceptions to Specific Requests



Fundamental Alteration

Change to the nature of program,
service, or job



Undue Burden

Financial or administrative burden

Fundamental Alteration

- A specific accommodation is **not required** when it would result in a fundamental alteration of the nature of the program, service, or job function
- A fundamental alteration:
 - Changes a course or course of study so significantly that it alters the **essential nature** of a course or content of the curriculum
 - Changes an approved job description so significantly that it alters the **essential elements** of the job
- Students and employees are required to meet applicable defined academic, technical, and conduct standards or essential job functions



Assessing Fundamental Alterations in Academic Coursework

- Consult with faculty who teach course (and possibly department chair)
- Work with faculty to identify the course's essential academic and technical standards, the learning outcomes, and the goals for reaching those outcomes
- Determine modification options
- Understand why an essential standard cannot be altered
 - Would an alteration lower the academic standards of the course or program?
- Not a decision to take lightly; high bar to defend

OCR Fundamental Alteration Guidance

Considerations for determining whether an academic and technical standard is essential:

- Nature and purpose of the program
- Relationship of the standard to the functional elements of the program
- Whether exceptions or alternatives are permitted
- Whether the standard is required in similar programs at other institutions
- Whether the standard is essential to a given vocation for which the program is preparing students
- Whether the standard is required for licensure or certification in a related occupation or profession

Undue Burden

- Undue burden can be a financial or an administrative burden
- Fact-specific inquiry; very high bar
- Significant difficulty or expense to provide
- Administrative burden is easier to support if documented
- Financial burden assessed against entire institutional budget
 - This is rarely met



Accommodation Disputes

- The requesting individual may disagree with the disability/accessibility services staff's accommodation recommendations
- Institutions should have a process in place for the requesting individual to address accommodation disputes that may arise:
 - The dispute could include faculty
 - Should be overseen by the ADA/504 Coordinator
- Disputes related to offered or provided accommodations are not themselves a basis for discrimination, though they could become one in the future
- There should be a separate published process to address accommodation disputes

Documentation and Communication Issues

- Clear, detailed documentation is necessary
- OCR has noted that many institutions grapple with poor communication practices, including:
 - Failing to document accommodations provided
 - Failing to document the interactive process
- Communication is key
 - Nuance and soft skills to navigate accommodations conversations with faculty and/or supervisors



ADA/504 Grievance Process

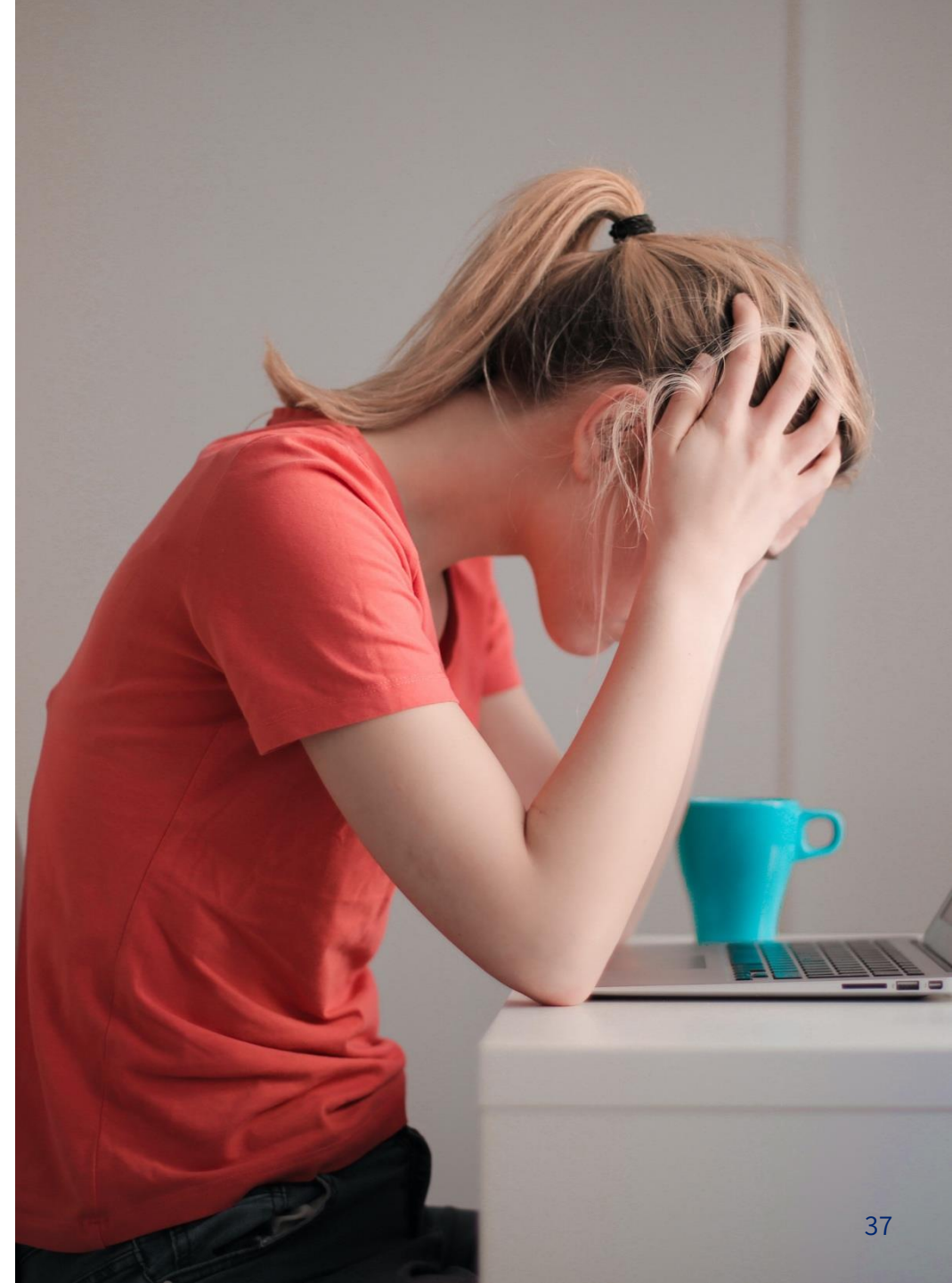
Overview of Grievance Process

- Notice of non-discrimination must identify the ADA/Section 504 Coordinator by name and include:
 - Office address
 - Contact info
- ADA and Section 504 require a grievance process for allegations of discrimination on the basis of disability for both students and employees
- ADA/Section 504 Coordinator oversees the grievance process and ensures prompt and effective response

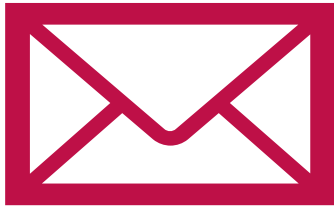


Basis for ADA/504 Grievance Process

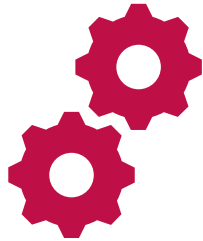
- Discrimination on the basis of disability
- Harassment on the basis of disability
- Violations of ADA/Section 504 resulting in an inability to access the education program or activity
- Provided accommodations had a discriminatory effect



Key Grievance Process Policy Elements



How and where to
file a grievance



Timeframe and
processes to be
followed,
including appeal



Time limit to
complete
investigation
(typically 30 days)



Statement on how
long and where
files are retained

Investigation Process

- ATIXA recommends requiring written complaints
- Gather **relevant evidence**, including any interviews (investigation):
 - Investigation may be formal or informal
 - A single person can investigate and make determination
 - Completed by the ADA/504 Coordinator, an institutional designee, or an external contractor
- Provide **written documentation** of investigation and decision with rationale

Appeal of Discrimination Determination

An appeal process is required by law

- Written outcome should provide information about how to appeal an ADA/504 grievance decision
- ADA/504 Coordinators must identify the following, and specify in policy:
 - Appeal Decision-maker(s)
 - Timeline for appeal
 - Process for considering appeal
- Decision by the Appeal Decision-maker is final
- Individual may still file a complaint with a federal or state agency

Recordkeeping Recommendations

- Retain files consistent with other records retention schedules at the institution
- Store records related to ADA/504 grievance processes separate from standard student and/or employee records
- Use an electronic database for ease of access and data collection



The Intersection of Disability and Conduct

All Students and Employees Must Meet



Conduct
Codes



Behavioral
Expectations



Academic/
Technical
Curriculum
Standards



Essential Job
Functions &
Requirements

Interactive Process vs. Conduct Process

- All students and employees may be held accountable for behaviors that violate the student conduct code or employee handbook
- Exempting a student or employee from a conduct standard is **not** a reasonable accommodation
- Address the behavior, regardless of disability status/mental health diagnosis
 - Examples: classroom disruption, threatening behaviors, failure to comply
- Always consider whether accommodations could help to address the concerns
 - Accommodations could mitigate risk or support behavior change
 - Examples: housing change, schedule adjustment, or other academic support

Student Conduct Process and Mental Health

- **All students are entitled to due process/fundamental fairness** before disciplinary action
- **Common mistake:** sidestepping the conduct process when mental health concerns are present
- Conduct process could result in/coincide with:
 - Voluntary agreement for assessments
 - Mandated assessments if student is found responsible
 - Connection to BIT/Care Team and case management services
- Avoid discriminatory outcomes:
 - Imposing discipline **outside** of the normal conduct process based on perceptions about a student's mental health
 - Imposing **harsher** disciplinary outcomes on a student with mental health concerns, even through the conduct process

Employee Mental Health and Conduct

- Employee must be able to perform the essential functions of the job, with or without reasonable accommodations
- Conduct expectations extend to the workplace as well
- Consider resources to evaluate and respond to workplace behaviors:
 - Human Resources
 - BIT/Care Team (if team scope includes employees)
 - Employee Assistance Program

Web and Digital Accessibility

The Case for Web and Digital Accessibility

- Allow all individuals to do the following with equivalent ease of use:
 - Obtain the same information and services
 - Engage in the same interactions
- Many disabilities affect website and technology access:
 - Auditory, cognitive, neurological, physical, speech, visual



Laws, Guidance, and Enforcement

- **Web Content Accessibility Guidelines (WCAG)**
 - World Wide Web Consortium (W3C)
 - w3.org
 - Current standard: W3C Accessibility Guidelines 2.0 AA
 - Draft standard: W3C Accessibility Guidelines 3.0 (issued July 2023)
- On April 24, 2024, the Department of Justice published final rule updating Title II of ADA
 - Includes specific requirements about how to ensure that web content and mobile applications are accessible to people with disabilities
 - Applies to state and local government (including public institutions)
 - Compliance by June 2026 or 2027, depending on institution size

Tips for Institutional Planning

- Understand the scope of needed changes
 - Who creates “web content” for your institution?
- Consider value of an Accessible Technology Policy and procedures
 - Communicates institutional values
 - Establishes technical requirements for campus stakeholders
- Provide learning design support for faculty and instructors
 - LMS and instructional applications
 - Textbook and course materials
- Address and improve procurement policies and procedures
 - Specify technological requirements for technology and other vendors



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