Agenda

- Legal Overview
  - State & Federal Law
  - Key Terms & Definitions
- Accommodations in the Lab/Clinic Setting
- Roles & Responsibilities
  - Faculty/instructors
  - Supervisors in lab/clinical settings
  - DSPS
  - Students
- Practical Application
Federal Law: ADA & Section 504

- **ADA/Title II**: Regulates public entities including colleges
- **Section 504**: Regulates recipients of federal funds
- **ADA & Section 504**: No discrimination against individuals with disabilities by excluding them from entity’s services, programs, or activities
Federal Law: ADA & Section 504 Enforcement

The Office for Civil Rights
• Part of federal Department of Justice
• Enforces federal anti-discrimination laws, including:
  – Section 504
• Nursing programs appear of interest

State Law: Education Code and Title 5

• Equal access to programs & facilities for all students—(Ed. Code § 72011)
• No discrimination in any program or activity by a postsecondary educational institution—(Ed. Code § 66270)
• Governs services to disabled students through disabled student programs and services—(Ed. Code §§ 67310, 84850; title 5, §§ 56000 etc.)
Key Terms

Person with a disability:
- Physical or mental impairment
  - Includes psychiatric illnesses such as depression, bipolar disorder, PTSD & anxiety disorders
- Results in substantial limitation of one or more major life activities
- Perception of such an impairment

Qualified Handicapped Person
- Protections apply only to “qualified” handicapped persons:
- “Qualified” means the student meets the academic and technical standards for admission or participation in the program or activity—with or without reasonable accommodations.
Key Terms

The Interactive Process:
• The collaborative process by which the school determines whether a qualified student can be reasonably accommodated

• Steps:
  – Analyze essential components of the academic program and “job” functions in clinical settings
  – Identify limitations of the position
  – Identify possible reasonable accommodations

• Be creative – process counts!

Reasonable Accommodation:
• A modification to a district’s program, facilities or services (academic or nonacademic) to enable equal access.

• A reasonable accommodation:
  – Is determined by the educational institution
  – Must provide meaningful access and participation
  – Does not fundamentally alter program
  – Does not lower academic standard
  – Does not impose undue financial or administrative burden
  – Does not have to be the best available option or student’s first choice
Reasonable Accommodations in Nursing Education Programs

Reasonable Accommodations

The Academic Setting Generally

- Reasonableness is fact specific
- "Recipients" (i.e. colleges receiving federal funds) must make reasonable modifications to academic requirements:
  - Where necessary to ensure requirements don’t discriminate on the basis of handicap, against a qualified handicapped applicant or student
- Recipient may not impose on handicapped students other rules that limit participation, such as:
  - Prohibiting tape recorders in classrooms or dog guides in campus buildings
Reasonable Accommodations

The Academic Setting Generally

- Modifications may include such things as:
  - Altering time permitted for completing degree requirements,
  - Substitution of specific courses required for completing degree requirements, and
  - Adapting how specific courses are conducted

- Colleges not required to modify academic requirements essential to the program of instruction, or to any directly related licensing requirement.
  - Uniform imposition of such standards and requirements regardless of disability does not constitute unlawful discrimination
  - But: determination must be based on individualized inquiry

Reasonable Accommodations

When does an accommodation alter a program/lower standards?

- Extended time to take a history exam?
  - No

- Extended time to take a typing exam?
  - Yes
Reasonable Accommodations

When does an accommodation alter a program/lower standards?

•  Excusal from demonstrating ability to use microscope by blind student in microbiology class?
  –  It depends:
    •  Is mastery in handling a microscope a core part of the curriculum? (Answer requires faculty input)
    •  Is there an alternate way to receive curriculum and demonstrate relevant skills? (Answer requires faculty input, technology input)
    •  Is the proposed program modification economically and administratively reasonable? (DSPS conducts this analysis)

Reasonable Accommodations

When does an accommodation alter a program/lower standards?

•  Permission to take exams in alternate setting?
  –  Doesn’t implicate program standards, as it is the same exam
  –  Concern with security/cheating not an academic standards issue.
    ▪  Relates to logistical reasonableness and is a DSPS function
    ▪  DSPS should work with faculty to address exam integrity concerns
  –  Inconvenience caused by alternate exam schedules is not an academic standards issue
    ▪  Reasonable accommodations may cause inconvenience and/or increased costs
    ▪  DSPS should work with faculty to minimize inconvenience involved with alternate testing schedules.
### Reasonable Accommodations

#### The Lab/Clinical Setting

- **Accommodations not required that alter the clinical setting**
  - Hours or calendar
  - Nature of work performed

- **Accommodations not required that lower academic standards**
  - *Example:* Reducing the quantity of work performed is not required…
  - If quantity of work (e.g. multi-tasking or time management) are part of the skills being taught and evaluated

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#### The Lab/Clinical Setting

- Avoid conflating essential functions & common physical demands
- Don’t describe physical demands as “required” ….. unless truly essential to the position
- Beware the “chilling effect”
Reasonable Accommodations

The Lab/Clinical Setting

….before you say “no,” ask:

– Are high standards confused with “how” standards?
– How might implicit bias impact perceptions of qualified/unqualified applicants? Reasonable/unreasonable accommodations?

……before you say “no,” examine the clinical technical standards:

– Does the Nursing Program value “KSAs” where disabled candidates may have expertise?
– How do issues of diversity impact this work?
– What clinic-related criteria value or attract diverse/disabled candidates?
– What clinic-related criteria assess “sensitivity to diversity.”*
Roles and Responsibilities

Roles in the Accommodation Process

• Faculty/Instructors and Clinical Supervisors
  – Determine whether a student meets academic standards
  – Provide input on whether proposed accommodations reduce academic standards

• DSPS
  – Determines whether a student is disabled/eligible for accommodations
  – Has final authority to grant/deny requested accommodations

• Students
  – Inform faculty/instructors of granted accommodations
  – Comply with requirements to provide notice and coordinate with faculty/DSPS as-needed for implementation
Faculty Role in Accommodation Process

Issues related to implementation:

• What information does an instructor/clinical supervisor need to know?
  – The functional limitations of a student
  – The accommodation to be implemented
  – Who to contact for support/guidance in implementing the accommodation
  – Not a student’s diagnosis or other medical information

• Who is responsible for informing an instructor of an approved accommodation?
  – Generally, the student

• What if a student directly requests an accommodation from an instructor?
  – Redirect to DSPS

Working with Healthcare Partners

Schools and Clinic/Hospital partnerships need to address

• Student responsibility to communicate needs to proper party (Clinic’s HR Department vs. DSPS vs. Clinical Supervisor)

• Roles of DSPS vs. healthcare partner/clinic HR department

• Collaboration between clinic supervisor and DSPS
Working with Healthcare Partners

- **School – Clinic/Hospital contract terms to examine:**
  - Student oversight and evaluation
  - Authority/process for removing a student
  - How site’s employment standards/procedures apply to clinic participants
    - Background checks
    - Technical standards
    - Safety standards
    - Disability interactive process/accommodations

Practical Application
Case Study: Doing it Right the First Time

Andy Smith is entering his first semester in the College’s nursing program. DSPS has determined that he is a student with a disability. Andy has requested the following accommodations:
- Double time for tests & quizzes;
- Tape recording lectures;
- No lifting more than 10 lbs. in clinical setting;
- Extended time to submit clinical notes; and
- Reduced caseload in clinical setting.

Case Study: Doing it Right the First Time

Double time on tests & quizzes:

a) What, if anything, should DSPS do before granting this accommodation?
b) One instructor asserts that the accommodation is not reasonable because testing security is extremely important and cannot be ensured if Andy gets to take his tests at a different time and location.

How should DSPS respond?
Case Study: Doing it Right the First Time

Tape recording lectures:

a) What, if anything, should DSPS do before granting this accommodation?

b) One instructor asserts that the accommodation is not reasonable on the following bases.
   - She is a healthcare professional and doesn’t see a connection between Andy’s apparent physical limitations and the request to tape record lectures. Without knowing more about the nature of his supposed disability, she can’t determine if this is a reasonable and legitimate need.
   - It will make other students self-conscious and less likely to speak.
   - It intrudes on her academic freedom and she does not consent to being recorded.

How should DSPS respond to each concern?

Case Study: Doing it Right the First Time

No lifting more than 10 lbs. in clinical setting:

a) What, if anything, should DSPS do before granting this accommodation?

b) The instructor who supervises clinical placements states that when in clinical, students regularly move patients and equipment and that this is just “part of the job.”

How should DSPS respond?
Case Study: Doing it Right the First Time

Extended time to submit clinical notes:

a) What, if anything, should DSPS do before granting this accommodation?

b) The instructor who supervises clinical placements states that preparing clinical notes quickly is part of being a nurse—it’s how they communicate with the next shift.

Is this a reasonable accommodation?

How should DSPS respond?

Case Study: Doing it Right the First Time

Reduced caseload in clinical setting:

a) What, if anything, should DSPS do before granting this accommodation?

b) The instructor who supervises clinical placements states that juggling multiple cases and multi-tasking is inherent to nursing and a key skill that is being developed and assessed in the nursing program.

How should DSPS respond?
Thank you!

Laura Schulkind
Partner | San Francisco Office
415.512.3000 | lschulkind@lcwlegal.com
www.lcwlegal.com/our-people/laura-schulkind

Alysha Stein-Manes
Associate | Los Angeles Office
310.981.2734 | asteinmanes@lcwlegal.com
www.lcwlegal.com/our-people/alysha-steinmanes