

ADAAA of 2008
Impact on Post-secondary Institutions

The ADA Amendments Act (ADAAA) also applies to the Rehabilitation Act of 1973.

Definition of Disability as used in this Act:

- (1) **DISABILITY**- The term 'disability' means, with respect to an individual--
- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (B) a record of such an impairment; or
 - (C) being regarded as having such an impairment

Why the changes were made:

- Individuals whose disabilities were mitigated by medication, adaptive equipment, assistive technology, or learned behavioral interventions were not considered eligible as individuals with disabilities.
- A person's disability needs to limit one's functioning in major life activity that no longer needs to be in more than one activity.
- The term substantially limited was so narrow that it suggested a person with a disability had to be so restricted in functioning

New Law:

- Mitigating measures no longer remove the classification of an individual being disabled. The determination of impairment that substantially limits a major life activity must be made without regard for the impact of the accommodations.
- The accommodation process under the ADA has not been amended. Documentation is still required. While mitigating measures may be irrelevant to the question of discrimination that is analogous to discrimination on the basis of race or sex; when evaluating a request for a particular accommodation both the positive and negative impacts of mitigating measures are relevant to determining an effective accommodation.
- Institutions must make accommodations (assistive technology, reasonable accommodations, auxiliary aids or services, learned behavioral or adaptive neurological modifications) even when their use mitigates the impact of the disabling condition.

- Major life activity has been clarified so there is no confusion that it includes working, communicating, **concentrating, thinking, reading**, and other activities of central importance. These additions supplement those listed in the old ADA 1990, which also includes learning.
- Major life activity can be just one disabling condition and it does not have to impact more than one major life activity.
- Substantially limited has been clarified **not** to mean that the disabling condition is “significant” or “severe”, just substantially limited.
Example: "A person is considered an individual with a disability for purposes of the first prong of the definition when [one or more of] the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. A person who can walk for 10 miles continuously is not substantially limited in walking merely because on the eleventh mile, he or she begins to experience pain because most people would not be able to walk eleven miles without experiencing some discomfort."
- Episodic or conditions in remission are still considered a disability if the individual can show that when the condition is active it substantially limits a major life activity. Documentation is required for the condition and the anticipated length of the disability.
- Because someone with a specific learning disability can perform well academically does not mean that he/she may not also be substantially limited in the major life activities of learning, reading, writing, thinking, and speaking. Of course, the person would still need to establish that he/she was substantially limited in this manner and that he/she needed reasonable accommodations. Students may elect to use accommodations as they feel they are necessary.

Post-secondary Institutions

- Fundamental Alteration- Nothing in this Act alters the provision of section 302(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved. Institutions must be able to substantiate the reason for denying an accommodation.

- The activities “concentrating” and “thinking” may pose problems for post-secondary institutions. Thinking and concentrating are easily understood as major life activities when reading and learning are considered. Evaluating and accommodating thinking or concentrating have considerable overlap with learning and reading since like many major life activities they are in reality complex tasks with component processes. Often it is an impairment of a component or sub process that changes how (the manner, conditions or duration that individuals need) people successfully engage in the larger activity.
- The Amendments will broaden the scope of who is covered by the ADA. The ADA provides two core rights for individuals with disabilities; non-discrimination and reasonable accommodation. While no hard data exists clearly the number of individual protected under the reset definition of disability will increase. Institutions and offices should be prepared to review more requests for accommodations.
- Surveys suggest that six to nine percent of the potential college population has a disability.
- Whether there is a noticeable increase or not institutions will need to review their documentation policies to bring them in line with the Amendments.
- “Educational, testing, certification and licensing entities covered by the ADA also maintain discretion to establish appropriate and reasonable documentation requirements related to the determination of disability, as is true under current law.....We expect that the less demanding standard applied to the definition of disability will allow students and licensure candidates with documented disabilities to more readily access appropriate accommodations on examinations when needed.” Managers’ Report
- “The bill returns the proper emphasis to whether discrimination occurred rather than on whether an individual's impairment qualifies as a disability. ...and students with physical or mental impairments will have access to the accommodations and modifications they need to successfully pursue an education.” Representative George Miller on the floor of the House; [Congressional Record 9/17/2008, Page: H8294](#)
- Under the Amendments, documentation policies shift the focus from diagnostic evidence of disability to supporting the need for requested accommodations. Documentation requirements need to focus on the effectiveness of formal and informal accommodations and adaptive strategies.

- The Amendments do not directly impact the process of determining reasonable accommodations. In a restatement of current law the amendments assure institutions of higher education that the existing principle that entities need not make modifications to policies, practices or procedures that would fundamentally alter the nature of programs or services remains intact. The [Senate Managers Report](#) reminds us that “a university would not be expected to eliminate academic requirements essential to the instruction being pursued by a student, although the school may be required to make modifications in order to enable students with disabilities to meet those academic requirements. Current regulations provide that “Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.” A waiver policy should be in place.
- Once a request has been made and supported by the student’s documentation and presented to program or faculty member, what process is in place to determine if the accommodation is reasonable or a fundamental alteration? **Wynne v. Tufts University School of Medicine.** Institutions must be able to explain their rationale for “fundamental alteration” or whether the accommodation places an undue burden on the institution.
- (976 F.2d 791, 932 F.2d 19) outlines the process an institution should go through before refusing to provide an accommodation because they believe it would lower academic standards or fundamentally alter a program of study. The institution should show that:
 1. officials with relevant duties and experience considered the accommodation request;
 2. that they meaningfully considered the impact on the program and the availability of alternatives; and
 3. that they reached a rationally justifiable conclusion that the available alternatives would result either in lowering academic standards or a substantial alteration to the program of study.

Technical Standards

- Not all essential requirements are academic, particularly in clinical or field based programs. The Amendments increased emphasis on the questions of appropriate accommodation suggests proactively establishing a process for reviewing and creating technical standards. Technical standards are nonacademic criteria for admission and continued program participation.

They may include such things as abilities in context (ability to discriminate breath sounds) Behaviors in the present (compliance with an established code of conduct) or Safety (a direct threat to health and safety).

- A collaborative process is useful in establishing technical standards. Standards should be anchored to the curriculum, supported in policy and practice and utilize objective performance criteria that can be reliably applied to all program applicants or participants. Finally, an individualized interactive process must be used to determine if reasonable accommodations would allow a student to meet technical standards.

Suggestions:

1. An interactive process with students/employees is recommended.
2. Review policies/procedures and curriculum to ensure all requirements are essential.
3. Avoid making a disability determination based on student/employee performance.
4. Consider confidentiality at all times, particularly in the presence of other students/employees.
5. Accommodations that fundamentally alter a program do not need to be provided, particularly if the student cannot otherwise meet the standard set forth by the curriculum.
6. Accommodations that cause an undue burden on faculty, programs, and services that are financial or otherwise need not be provided.
7. Always document all efforts to accommodate and decisions that deny accommodations. The Office for Civil Rights looks at institutions' good faith effort in accommodating individuals when they review claims of discrimination.
8. When in doubt, call me...X 3178.