Is that a Reasonable Accommodation? Establishing Technical Standards and Essential Elements (with some Fundamental Alterations thrown in)

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CollegeADA.com as of 9/24

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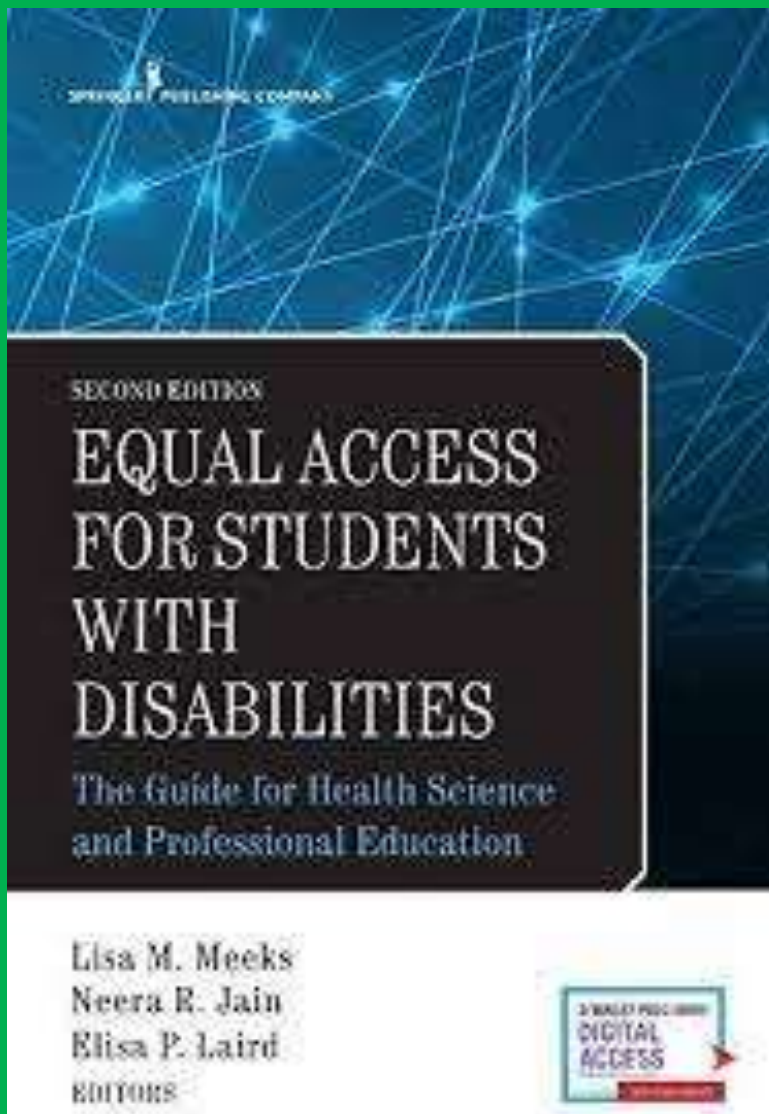
Meeks, L., Jain, N., & Laird, E. (2021). *Equal Access for Students with Disabilities, The Guide for Health Science and Professional Education* (Second). Springer Publishing.

Matt, S. B., Maheady, D., & Fleming, S. E. (n.d.). *Educating Nursing Students with Disabilities: Replacing Essential Functions with Technical Standards for Program Entry Criteria*. 8.

Technical Standards-Defined Slide 1

Technical standards are the requirements for admission and participation in a program (With or Without accommodations)

Technical Standards-Defined

- Non-academic abilities and characteristics
  - admission
  - promotion
  - graduation
- Safe/Effective practice

- Defined expectations as learners
  - Soft skills
  - professionalism
  - behaviors

Technical Standards- Applied

- Ethics
- Interpersonal interactions
- Behavior expectations

Can become enforceable standards when posted/publicized

Technical Standards - Applied #2

- Admission
  - reflect current practice
  - not past practice

Technical Standards – Applied #3

- Required skills identified
  - not how they occur

Essential Elements-Defined

Essential elements are those tasks which must be performed in the classroom, clinical, and/or lab setting on a day-to-day basis.

Essential Elements-Defined #2

- In the field of work, "employers determine the essential functions for a particular job and those functions are related to each individual employment setting and each individual job".

- List of essential and preferred skills... (Matt, et al., n.d.)

Essential Elements – Applied

Determine:

- What is the purpose of the course?
- Are there pre-existing abilities or skills all participating students must have?
- What other knowledge, background is expected?

E.E. Applied Specific Example

A student with a psychological disability requests to give a required oral presentation in a sociology class to the instructor in private rather than to the entire class.

The accommodation could be approved since the essential requirement is met, which is the presentation itself.

E.E. Applied Specific Example #2

The same student with a psychological disability requests the same accommodation in an oral communication class where preparing and giving speeches is required.

The accommodation is denied because the fundamental requirement is the delivering a speech publicly is essential to the course objective.

Essential Elements:

The outcomes; including skills, knowledge, and attitudes that all students must demonstrate with or without accommodations which instructors articulate to complete the course.
(Matt et al., n.d.)

Technical Standards:

Are enforceable standards for ethics, interpersonal interactions, behavior expectations and other similar non-academic competencies which can be spelled out.
(Meeks et al., 2021)

How do we in a disability office figure out these requirements?

This is not the sole responsibility of a disability office. You should involve and collaborate with your faculty in this discussion.

-Faculty bring knowledge of the coursework content.

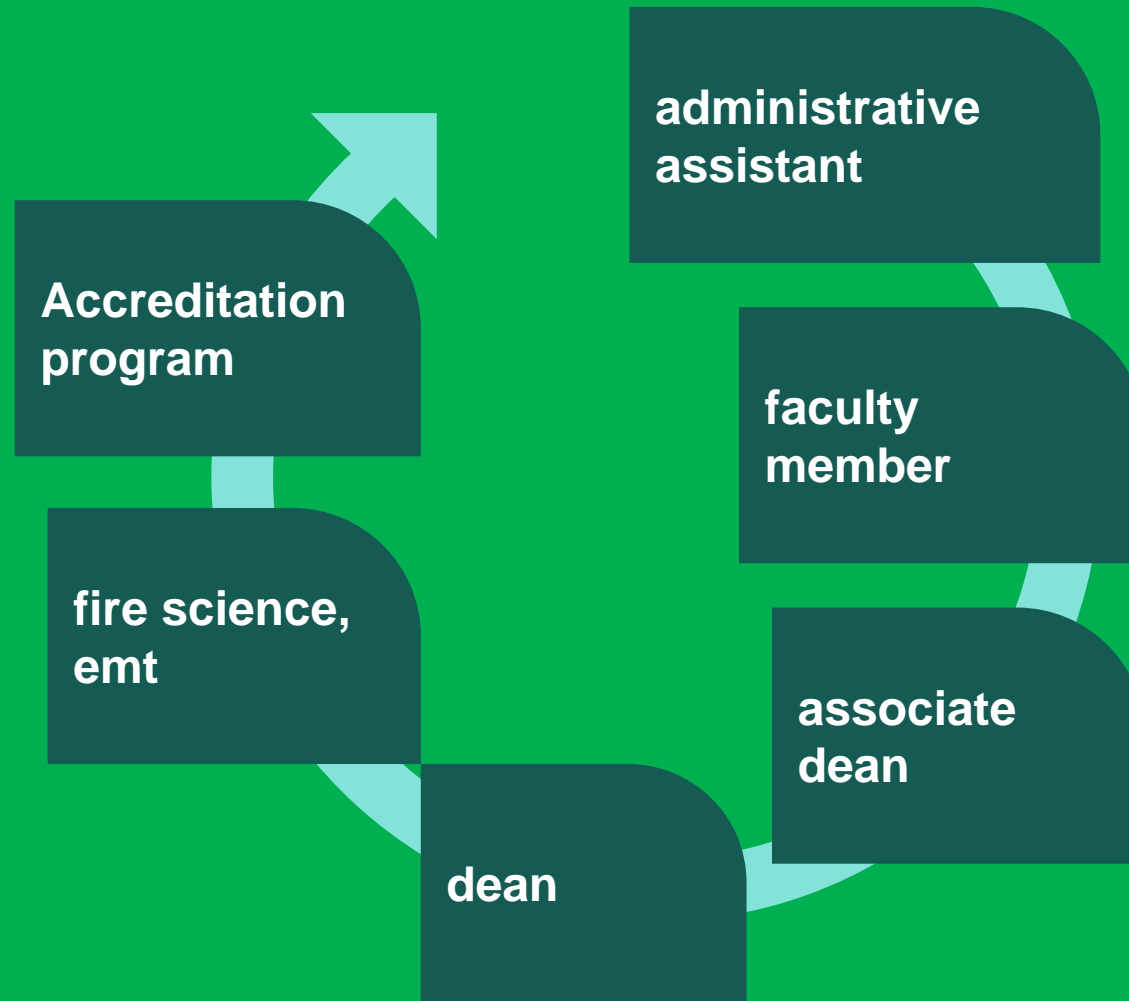-The DSO staff understand which accommodations might be available.

Bringing in Faculty

DRC

Faculty Connections

Faculty Information

- Help faculty to understand the reason for posting these standards
- Posting can occur online in applications, and on websites
- Partnership is required… DRC cannot do it alone

Faculty: Technical Standards #1

Do's

- Task requirements should be based on skills needed
- Standard should include abilities students will need to learn the skills
- Apply standards equally across all applicants

Don'ts

- Standards should not be based on the skills the student will have upon completion of their entire training
- Standards should not focus on how the student uses their abilities to complete the task successfully
- Standard should not single out Students with Disabilities

(Matt et al., n.d.)

Faculty: Technical Standards #2

Do's

- Contemplate how a student may use alternative ways of completing each task

- Make sure to include "able to meet these requirements with or without reasonable accommodations"

Don'ts

- Do not include these alternatives in the standards themselves

- Don't confuse technical standards and essential elements

(Matt et al., n.d.)

DRC and Faculty Partnerships

- Increasing numbers of students looking for accommodations in programs having Technical Standards and Essential Elements

- Posted and well written standards allows the DRC to more appropriately analyze the appropriateness of the requested accommodation as well as to determine whether a fundamental alteration may occur

With the increasing number of requests for accommodations that make us as staff in a DSO say, "Humm, I am not sure about this".

Leaning on well written technical standards and essential elements which faculty have developed and posted, would allow a DSO and faculty to analyze whether the request could lead to a fundamental alteration of the program or class.

Wynne v. Tufts University School of Medicine
932 F, 2d 19, 26 (1st Cir. 1991

In cases involving modifications and accommodations the burden is on the institution to demonstrate that relevant officials within the institution considered alternative means, their feasibility, cost and effect on the program, and came to a rationally justifiable conclusion that the alternatives would either lower academic standards or require substantial program alteration.

Sources: Karen Nielson, JD/MSW, UC Berkeley, City University of New York, Spring 2017; Rothstein, Laura, Center for Excellence in Higher Education Law and Policy, Feb. 2012; Colker, Ruth & Grossman, Paul"The Law of Disability Discrimination in Higher Education".

Develop and/or understand your Wynne v. Tufts Process at your institution. This will assist you to know and understand whether a request for an accommodation is a fundamental alteration.

Let's dive into Fundamental Alterations!

Fundamental Alteration Procedure

- If an accommodation requested by a student appears to be a fundamental alteration to a course or program of study, the following will be of assistance in analyzing this request.

- **A fundamental alteration cannot include any change to curriculum or course of study that is so significant that it alters the required objectives or content of the curriculum in the approved course outline, thereby causing a fundamental alteration.**

- If a request by a student is considered by the DSO Advisor to possibly be a fundamental alteration, a committee will be gathered to discuss the request.

Fundamental Alteration (continued #2)

- The committee will consist of objective and knowledgeable persons to include:

- The professor of the class

- A second professor with licensing, accreditation, or subject matter expertise of the class topic

- The Associate Dean or Dean of the division

- The Associate Dean of DSO, or ADA coordinator.

- In attendance for consultation would be an DSO advisor familiar with the student and the Director of DSO.

Fundamental Alteration (continued #3)

- The committee will review the requested accommodation and document thoroughly as the **burden of justification** is on the institution when denying a requested accommodation as a fundamental alteration.

Questions to review for a Course request:

- What is the purpose of the course?

- What are the prerequisites or other background knowledge needed?

- What core outcomes/expectations are stated on the syllabus and required of all students?

- What specific knowledge, principles, skills or concepts must be mastered and demonstrated?

- What aspects/requirements constitute a significant component of the learning process?

- Could an alternative achieve the same result?

- What are the essential methods of instruction which are fundamental to the nature of the course?

- Have we diligently searched for alternatives?

Questions to review for an Academic Program:

- What skills or competencies will be needed within the field after graduation?

- What are the requirements for licensing or professional accreditation?

Fundamental Alteration- Final

- If the committee has explored this issue in a well-reasoned manner, without discrimination, and believes the accommodation would fundamentally alter the essential elements of the course or program and no reasonable alternative accommodations exist, then the requested accommodation can be denied

O*Net Activity

- O*Net can assist establishing technical standards.
- https://www.onetonline.org/
- O*Net is a U.S. Labor Job website which has knowledge, skills, and abilities for most any job out there.

Share with Faculty the O*Net online resource. This resource allows them to know the hard work has been done for them by the U.S. Department of Labor.

Example of Inclusive Nursing Technical Standards #1

White Paper from 2014

- "Ability to learn in classroom and educational settings."
- "Communication abilities for sensitive and effective interactions with patients, persons, families, and/or communities."
- "Ability to assess and monitor health needs."

(Marks et al., n.d.; Matt et al., n.d.)

Example of Inclusive Nursing Technical Standards #2

White Paper from 2014

-"Critical thinking, problem-solving and decision-making ability needed to care for persons, families, and or communities across the health continuum and within their environments, in one or more environments of care."

-"Concern for others, integrity, ethical conduct, accountability, interest, and motivation."

(Marks et al., n.d.; Matt et al., n.d.)

Current Nursing Student Learning Outcomes vs. UDL

From a Vocational Nursing Class

This comes from Student Learning Outcomes for a Vocational Nursing Class. The class syllabus is very detailed in guidelines, in dress, in attendance, in tardiness, in supplies, etc.

A UDL perspective could note: attendance (will affect grade and passing this class), being on time (will affect grade and passing the class). But faculty look at "x" number of absences and tardies.

Address issues of supplies, attendance, grading, attire, and policies.

Using UDL to Create Essential Elements #1

Completing this Vocational Nursing Clinical Class students will:

- Apply the theory, concepts, and skills involving specialized materials, tools, equipment, procedures, regulations, laws, and interactions within and among political, economic, environmental, social, and legal systems associated with the occupation in the business/industry.
- Demonstrate legal and ethical behavior, safety practices, interpersonal and teamwork skills, and appropriate written and verbal communication skills using the terminology of the occupation and the business/industry.

Using UDL to Create Essential Elements #2

Completing this Vocational Nursing Clinical Class students will:

- Perform nursing skills as identified in the State Board of Nursing Designated Entry Level Competencies (DECs) while supervised by the clinical instructor.
- Demonstrate clinical judgment using the nursing process and Tanner's Model in the clinical setting as evidenced by best outcome decision making during patient care and clinical conference discussions.

Technical Standards in Action

Lauren Bush

Pro Tips

- Technical standards are not meant to deter students from success. ***A standard can be met with or without accommodations.***

- You and your student will face challenging questions from faculty. It is normal. **Stand your ground!**

Reflections

- Transitional meetings with faculty/deans per semester are essential. **Include the student!**
- Accommodations should encompass all aspects of the education experience while balancing real world experience. **Including clinicals or internships!**
- **Enjoy the moment when that student obtains their goal!**

Questions?

Resources

Ada_cases—Disability Support Services | CSUF. (n.d.). Retrieved March 7, 2022, from https://www.fullerton.edu/dss/faculty_staff/ada_cases.php

Axelrod, J., & Grossman, P. (2020, July 23). *Individualization, The Interactive Process and Fundamental Alteration* [Presentation]. AHEAD National Virtual Conference, Virtual AHEAD Conference.

Resources #2:

Determining Essential Requirements for Courses/Programs | Office of Accessible Education. (n.d.). Office of Accessible Education Stanford University. Retrieved February 14, 2022, from https://oae.stanford.edu/faculty-staff/faculty-teaching-staff/determining-essential-requirements-coursesprograms

Resources #3:

Marks, B., Ailey, S., & Aphn-Bc, C. (n.d.). *White Paper on Inclusion of Students with Disabilities in Nursing Educational Programs for the California Committee on Employment of People with Disabilities (CCEPD)*. 24.

Matt, S. B., Maheady, D., & Fleming, S. E. (n.d.). *Educating Nursing Students with Disabilities: Replacing Essential Functions with Technical Standards for Program Entry Criteria*. 8.

Resources #4:

Meeks, L., Jain, N., & Laird, E. (2021). *Equal Access for Students with Disabilities, The Guide for Health Science and Professional Education* (Second). Springer Publishing.

O*NET OnLine. (n.d.). Retrieved February 14, 2022, from https://www.onetonline.org/