

COVID Safe Campus' Addendum to Public Comment on Potential Improvements to U.S. Department of Education Section 504 Regulations

April 1, 2023

Re: U.S. Department of Education Office of Civil Rights' request for suggestions for improvements to regulations at 34 C.F.R. pt. 104, implementing Section 504 of the Rehabilitation Act of 1973.

On April 1st, 2023, COVID Safe Campus submitted the following addendum to our original comments to the U.S. Department of Education (August 17, 2022), to further discuss specific areas of concern including: (1) schools bans of certain disability accommodations, (2) retaliation in response to accommodation needs, (3) conflicting access needs, (4) excessive documentation requirements, and (5) accommodations for course assessments.

1. Banning accommodations should be considered disability discrimination:

- a. Any school-wide ban of accommodations is per se disability discrimination.
- b. Requiring masks, offering hybrid modalities, and remote formats are common examples of banned accommodations.
 - i. If an institution bans mask requirements, hybrid offerings, remote formats or anything else that could be construed as banning a disability accommodation, there is a presumption of disability discrimination and the institution has the burden to prove that students with disabilities will be included.

2. Retaliation for use of disability accommodations:

- a. Punishment or threatened punishment for requesting and/or implementing hybrid modalities, universal masking expectations in classrooms, should be considered retaliation in violation of relevant civil rights statutes and civil liberties protections.
- b. Neither students nor faculty should be forced into secrecy about their accommodations:
 - i. E.g. Testing: disclosing testing accommodations and threatening withdrawal of accommodations for disclosure; disciplinary action for disclosure, etc. (As an example, students have been threatened with honor code violations if they discuss accommodations and students have been told to maintain secrecy of accommodations

as if the school is doing them a favor, rather than accommodating their disability to provide equitable access to education.

- ii. It is schools' responsibility to address any biases that may exist regarding the need for and use of disability accommodations; not disabled students or faculty.

3. **Conflicting access needs:** When conflicting access needs arise, schools often respond by providing for one individuals' access needs at the expense of others. Instead all disabilities should be accommodated, and schools should consider the role of intersecting marginalizations in the accommodations process.
 - a. Conversations about disability accommodation needs should not be a one sided conversation that values some access needs more than others (e.g. faculty versus students, sensory and mobility disabilities accommodated more than other disabilities).
 - b. There are embedded disparities in higher education in terms of whose access needs get met, that often play out when conflicting access needs arise.
 - c. When faculty access needs go unmet, it impedes students' access and vice versa.
 - d. Conversations shouldn't be about whose access needs are valid, but focus on what resources are needed to meet all educators' and learners' access needs.
 - e. Essential program requirements or technical requirements should not be used to preclude access to accommodations; students can satisfy essential/technical requirements with accommodations.

4. **Documentation:** Students often can't access disability documentation due to overly burdensome documentation requirements that disproportionately impact those affected by health inequity:
 - a. Schools often require excessive documentation for mental disabilities (neurodevelopmental, cognitive, psychiatric disabilities) relative to physical disabilities, such as expensive and difficult to access neuropsychological testing. Similar issues arise for those with dynamic disabilities, and other stigmatized disabilities that are systematically minimized, underrecognized, and reliant on clinical diagnoses.
 - b. Schools should defer to students treating clinician when that student is in ongoing care with a health professional who provides documentation.

- c. Documentation requirements should not be limited to medical documentation given the medical model of disability often fails to consider disability accommodations needs. Disability documentation should be expanded to include evidence of disability such as:
 - 1. Any treating healthcare providers who observes functional impairment
 - 2. Documentation of impairments associated with other documented medical diagnoses, devices, and medication
 - 3. Non-clinical observations or documentation of impairment is sufficient documentation for disability accommodations: (e.g. faculty observations of impairments and access needs)
 - 4. Accepting evidence that previous use of accommodations mitigated the effects of disabilities in an academic or professional setting
 - ii. Any documentation a school requires beyond this scope should be funded by the school:
 - 1. Any required medical documentation (e.g. neuropsych testing) needs to be paid for and access to appropriate care facilitated by schools. Provisional accommodations should be provided until formal documentation can be furnished.
5. **Course Assessments:** Accommodations for course assessments shouldn't be limited to timing or format accommodations. Accommodations should allow someone to equally demonstrate their knowledge of the underlying subject matter and schools allow alternative forms of assessment if necessary to ensure all students can equally succeed in the class. Therefore, schools should permit accommodations for all types of disability, such as:
- a. Memory accommodations: open-book exams, reference sheets/outlines/summaries, notecards, course-video,
 - b. Communication and Deliver Format Accommodations: Oral delivery, presentations, art, video, podcast, etc.
 - c. Processing Accommodations: Calculators, typing versus handwriting, dictation software, reading out loud.
 - d. Sensory Accommodations: distraction free testing, low light, quiet, private testing, visual distractions.