

Key Disabled Students' Program Information, Procedures & Protocols for Implementation of UCOP PACAOS 140, 143 et seq (Provision of Academic Adjustments)

Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act, both mandate that colleges accommodate disabled students to provide equal access to services, activities and programs, including educational programs. This requires executing all the steps of the interactive process (see Section II below) to determine appropriate accommodations, including *academic adjustments* (accommodations in the educational programming). In 1994, UCOP incorporated the requirements of these federal laws into a system-wide policy entitled PACAOS §140. [Academic adjustments are specifically addressed in PACAOS §143.3.](#)¹ Each campus in the UC system was tasked with implementation of the policy.

UC Berkeley chose the Disabled Students' Program² ('DSP') as the entity to implement §143.3 on this campus. Thus, DSP is responsible for creating procedures to ensure modification of academic requirements, and course examinations, and to provide appropriate auxiliary services and equipment. They are also responsible for facilitating the interactive process, involving instructors, students and DSP specialists, to determine if a requested academic adjustment is appropriate, and to resolve disagreements.

The Need for this Document

Instructors report feeling uncertain of how to comply with the requirement to accommodate students in academic settings. There has been significant growth of this population of students, and changes in requirements to comply with the law and create inclusive classrooms. Along with the [Disability, Accommodation & Access in the UC Classroom](#) training video, developed in 2021 by our campus instructors, students and staff, and the shorter [disability access training for instructors](#) created as part of the Disability Access & Compliance office's disability access training bundle created in 2023, this document will serve to summarize key information and practices to support instructors and ensure disabled students can access academic programming on our campus. It will also link to other materials that are useful for instructors.

The Student Population and Academic Adjustments

Today there are approximately 6,000 disabled students registered with our campus Disabled Students' Program. This represents an increase of *158% in less than a decade*. We have 2,000 more registered disabled students than our next closest UC campus, UCLA.³ Campuses nationwide are experiencing significant increases in their disabled student population. Instructors are seriously struggling to meet the need, all the more so because many have not received any education about ADA requirements or

¹ The policy was last reviewed in 2020.

² DSP is so titled because it was founded by disabled students in the 1960s. It now serves both instructors and students.

³ Regent's Working Group Report on Students with Disabilities, 2024

training in creating inclusive classrooms. The disabled student population is richly diverse. Almost two in five (37%) DSP students have at least 4 marginalizations/minorizations (across gender, sexuality, race/ethnicity, disability, and class). 36% of DSP students are underrepresented minorities ('URM's) (and a majority are students of color), and 54% of DSP students are EOP eligible (URM, first generation college students, or low income students). DSP students are more likely than the average undergraduate to be women, trans/gender non-conforming, URM, re-entry students, current/former foster youth, first generation college students, and low income.⁴

A significant amount of the growth in the disabled student population can be traced to two legal developments; the reauthorization of the Individuals with Disabilities Act, which strengthened supports for disabled students in K-12, and the ADA Amendment Act of 2008 (the technical standards went into effect in 2012), which broadened ADA coverage to additional disabilities—including learning disabilities—and removed the requirement that disabled people prove a significant degree of limitation. At the same time, DSP has modified and added protocols and practices in response to developments in the field of special education, disability rights case law, guidance from the Departments of Justice and of Education, and administrative decisions from the Department of Education, Office for Civil Rights.

Below instructors can find current guidance, information and key DSP protocols related to academic adjustments, and a list of resources (training, offices, services) to help them create accessible classrooms (which require fewer adjustments to be inclusive of disabled students).

Key Information & Protocols to Implement PACAOS 143, et seq.

I. Creating Accessible Classrooms.

The best way to deal with academic adjustments is to not need them to begin with. Universal Design for Learning is not a universal solution for instructors seeking to accommodate students in their courses. For example, it doesn't address the challenges faced by instructors providing proctored exams for students with extended time accommodations. However, when classrooms are designed to be inclusive, far fewer students will need academic adjustments. You can learn to make your classroom inclusive for disabled students by taking advantage of trainings and resources designed to support instructors in this effort:

- [Disability, Accommodation & Access in the UC Classroom training video](#)
- [DAC webpage devoted to instructors resources on the topic of disability](#)
- [The Academic Personnel Office can connect instructors to the DSP instructors liaisons](#)
- [RTL has IT tools and services for instructors to create accessible classrooms](#)
- The [Center for Teaching and Learning](#) and the [GSI Teaching and Resource Center](#) offer trainings on inclusive instruction

II. The Interactive Process

⁴ My Campus Experience Survey, 2019 (next survey is scheduled for 2023)

The Interactive Process is the heart of all accommodations work, whether academic adjustments in the context of academic programs, or accommodations in dining, housing, transportation, emergency preparedness, recreation, or employment.

The student, instructors and DSP specialist each have a role to play in determining which academic adjustments are reasonable for each of the student's academic courses. This determination is individualized, meaning it is based on the student's disability-related needs and the specific course they are taking. The determination is reached through the 'interactive process'; a timely, good-faith process involving discussion and deliberation by all three parties. Students contribute information about the lived experience of their disability and how it impacts their ability to learn. Instructors contribute their expertise about the standards and objectives of the specific course in question. Disability specialists contribute forensic expertise- analyzing medical documentation and instructor and student provided information, through a legal lens, in the educational context, to determine which academic adjustments are efficacious, legally appropriate, and tenable within a given course. The interactive process produces a final Letter of Accommodation ('LOA').

The interactive process is started by the student, facilitated by the disability specialist, and implemented by the instructors in consultation with the student and disability specialist as needed. Each person has responsibilities, which are listed below.

Student Responsibilities:

- Register with DSP
- Provide medical documentation of an existing disability⁵
- Work with DSP to determine reasonable academic adjustments
- Work with instructors to implement those that end up listed on the LOA
- Work with DSP in the event that an academic adjustment is not effective, to explore other options

DSP Responsibilities:

- Review medical documentation and establish a student is eligible for for disability-based academic adjustments
- Work with student to determine reasonable academic adjustments
- Work with instructors to implement those academic adjustments listed on the LOA
- Engage with instructors where the instructor believes an academic adjustment may fundamentally alter their course or pose an undue hardship

Instructor Responsibilities:

⁵ There has been confusion among students and instructors regarding what medical evidence DSP is and is not allowed to request. To clarify: pursuant to 28 CFR §35.108 (D)(1)(vii), DSP 1) does require recent medical documentation of a disability covered by the ADA, and what limitations it creates for the student in the academic program, 2) DSP does *not* require disclosure of the disability, or require proof that it "substantially" limits the person.

- Work with the student to implement academic adjustments listed on the LOA
- Implement academic adjustments listed on the LOA consistently and in a timely manner
- Immediately notify the disability specialist in the event that they believe an academic adjustment listed in an LOA may fundamentally alter their course or pose an undue hardship
- Meaningfully participate in the process required for instructors and DSP specialists to determine if an academic adjustment constitutes a fundamental alteration or undue hardship (both are defenses to implementing an academic adjustment listed in the LOA)

III. Receiving a Request for Academic Adjustments.

How do you recognize a disclosure of disability by a student? When a student discloses a disability to a Berkeley instructor, the student has put UC on notice that they may be in need of an accommodation, which triggers a responsibility to ensure the student is provided with the necessary resources to participate in, and enjoy the benefits of, a Berkeley education. Sometimes, a disclosure of disability is clear (e.g. the student's disability specialist sends the instructor a Letter of Accommodation). Other times it is unclear (e.g. the student mentions their mental health, a physical disability, or a chronic condition in the context of speaking to an instructor about their classwork or an absence). In either situation there are clear steps to take:

A student asks you for an academic adjustment without an LOA. Students sometimes request academic adjustments directly to instructors without first working with DSP. When a student mentions a need for an academic adjustment based on disability, or otherwise indicates they may be struggling due to disability, instructors should immediately recommend that the student contact DSP and make sure they have contact information to do so. You can make this process easier for the students by including a short description of DSP, with a web link, on your syllabus.

Instructors are not *required* to provide an academic adjustment without an LOA.

- Providing adjustments outside the DSP process is not advised. It can lead to confusion for both the instructor and student as to expectations, and may expose the university to liability.
- In particular, instructors may not ask a student to provide documentation of a disability – that is the responsibility of DSP.

You receive a Letter of Accommodation ('LOA'). An LOA signals the student has a disability, has properly disclosed their disability to DSP, has provided documentation supporting their need for accommodation, and consulted with a disability specialist to determine reasonable academic adjustments. When a instructor receives an LOA, they must either:

- A. Implement the listed academic adjustments and work with the student, as necessary, to establish how the adjustments will be implemented in the course or program; or

In the event the instructor believes the academic adjustment is unreasonable, contact the disability specialist listed in the LOA to discuss next steps. There are two types of unreasonable accommodations: those that fundamentally alter a course or program and those that would constitute an undue burden to implement. In these cases it is said that instructors have a 'defense' to implementing the requested academic adjustment.

However, instructors *retain the right* to approve adjustments due to any extenuating circumstance (flu, COVID, family death, etc.). Instructors may consider a student going through the process of requesting DSP accommodations as an extenuating circumstance and approve temporary modification to their course while they await an LOA. Instructors can verify with DSP the expected timeline until a student receives their LOA. Typical modifications could include time and a half on an exam and a reduced distraction environment.

You receive a request for academic adjustment that is not related to disability. A request for an academic adjustment based on a death in the family, a seasonal illness (including COVID), or a conflicting work schedule, is not disability related, therefore not required by the ADA, and outside the scope of this guidance. Students making requests on these bases should not be sent to DSP. (Long COVID may be considered a disability.)

IV. Responding to the Disclosure of a Disability.

Reassurance and Confidentiality are key when responding in this situation. Disclosure of a disability is highly personal and sensitive for many students. When a student chooses to disclose to an instructor, the instructor should apprise the student of their rights and responsibilities in the accommodations process.

Dos

- Acknowledge the student has made a disclosure of disability.
- Assure the student that this disclosure is, and will remain, confidential except for legitimate business purposes (GSIs or department leadership may need to be made aware).
 - If a student shares suicidality, or an instructor believes they are a danger to themselves or others, contacting not only Center for Support and Intervention (CSI), but also the Tang Center, and if immediate concern is present, UCPD or Berkeley PD, can also be appropriate.
- Refer the student to DSP if they have not already registered. Tell them DSP works with students to determine appropriate accommodations for their courses.
- Once an LOA is received, discuss implementation of the academic adjustments indicated, as necessary, to ensure the student and instructor have the same expectations. Document any decisions made in an email.
- Provide academic adjustments in a consistent and timely manner.
- Provide only the academic adjustments listed in the LOA. If a student asks for different or additional adjustments, refer them back to DSP.

Don'ts

- Never ask the student to reveal the nature of their disability.
- Never ask for medical documentation.
- Never make assumptions about, or comment on, the academic adjustments at issue or the student's degree of disability (eg, 'you don't *look* disabled...'). If you believe the academic adjustment requested constitutes a fundamental alteration to your course, contact DSP. Remember that many disabilities can be invisible, including heart conditions, epilepsy, and autism.

Referral and Timing are important. Instructors should immediately refer students to DSP anytime they believe a student is requesting, or may be in need of, a disability related academic adjustment. Requests for an academic adjustment may be made at any time during the academic period. Students are advised to make requests before the academic semester begins; however, that is not always feasible. If a student requests an accommodation mid- semester, instructors should promptly refer the student to DSP or otherwise implement the academic adjustments listed in the LOA. LOAs are not retroactive; instructors are required to implement academic adjustments only after an LOA is received.

Before refusing any academic adjustment listed in an LOA, instructors must consult with the student's disability specialist to determine whether the academic adjustment qualifies as a fundamental alteration or undue hardship. Instructors should contact the individual listed on the LOA via email. It is reasonable to expect a response from DSP within 3-5 business days. If there is no response, instructors can email dsp@berkeley.edu for assistance or call 510-642-0518. Simply stating that an accommodation fundamentally alters a course or is an undue hardship is not enough. Instructors and the disability specialist must follow the deliberative process outlined below in section V, and have the LOA altered. Otherwise the LOA, as written, is binding.

V. Responses to Academic Adjustments.

While universities are not obligated to modify academic requirements that are essential to instruction or directly related to a licensing requirement, flexibility is prescribed where modification would neither lower academic standards nor substantially alter the program.⁶ This rule has been established in cases concerning higher education and the Americans with Disabilities Act of 1990.

Courts and enforcing administrative entities will grant deference to professional and academic judgment on this topic only when the decision to deny a request for academic adjustment is rationally justifiable and the university has created a factual record indicating a conscientious execution of the obligation to thoughtfully review requests for accommodation.⁷ Instructors and DSP staff must therefore engage in careful and documented deliberation in accordance with this guidance before refusing to implement a

⁶ 34 C.F.R. § 104.44(a).

⁷ Universities have "a real obligation ... to seek suitable means of reasonably accommodating a handicapped person and to submit a factual record indicating that it conscientiously carried out this statutory obligation." *Wynne v. Tufts Univ. Sch. of Med.* (1991) 932 F.2d 19, 25–26.

requested academic adjustment on the grounds that such an adjustment would fundamentally alter the course or program.

Instructors should never directly refuse to implement an academic adjustment, or debate with a student about the reasonableness of an academic adjustment. These discussions should take place with DSP specialists who have the requisite expertise. In addition, students are in an asymmetric power relationship with instructors and may be reluctant to defend their rights for fear of retaliation.

The ‘Fundamental Alteration’ Response. A fundamental alteration is defined as any change to a course 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 of the course.⁸ The decision that a proposed academic adjustment would fundamentally alter a course/program must be made by the Chancellor, or their designee, after considering all resources available for use in the course/program. Such a decision must be accompanied by a written statement of the reasons for reaching that conclusion.⁹ The decision must be made prior to denying an academic adjustment and must be decided on a case-by-case basis using careful and reasoned deliberation.¹⁰

At Berkeley, our process for determining whether a requested accommodation constitutes a fundamental alteration is designed to meet these requirements as follows:

UC Berkeley Process for Determining Whether a Proposed Accommodation is a Fundamental Alteration

The process described below is consultative and deliberative. Both the DSP Specialist and the instructor are key to the success of this process and should engage in discussion and collaborate to develop a reasonable accommodation. Ensuring a thorough, prompt, and equitable process is critical, as UC policy requires timely accommodation in order to ensure disabled students’ equal access to their academic programs.

While any concern regarding fundamental alteration is being resolved, the accommodation proposed by DSP must be provided by the instructor (if possible) until it is determined through the process described below that an accommodation fundamentally alters the course.

If an instructor raises a concern regarding fundamental alteration but then does not respond to DSP’s request for information that is necessary to resolve that concern, or otherwise doesn’t participate in a timely manner in the process described below, then DSP will finalize the appropriate accommodation without further consideration of the instructor’s concern.

⁸ Cal. Code Regs. tit. 5, § 56001(b).

⁹ 28 C.F.R. § 35.164.

¹⁰ See, *Guckenberger v. Boston University* (1998) 8 F.Supp.2d 82, 87–89.

The process for addressing instructor concerns regarding fundamental alteration resulting from an accommodation is generally as follows:

1. The Disabled Students' Program determines an appropriate accommodation for a student with a disability without the instructor's input.
2. Notice of the accommodation is shared with the course instructor and/or proxy via a Letter of Accommodation (LOA), (or via an email in the case of accommodations that may be significantly nuanced in their implementation, such as remote attendance accommodations or memory-aid accommodations). The instructor and/or proxy must read the LOA or email in a timely manner, generally within five business days after the academic term has started. (N.B. LoAs could be received at any time during a semester.)
3. If the instructor does not notify DSP in a timely manner that the accommodation may fundamentally alter the course, then the instructor is responsible for implementing it.
4. If the instructor is concerned that the accommodation fundamentally alters the course, then the instructor must with all deliberate speed (generally within three business days) notify the Disability Specialist listed on the LOA of their concerns.
5. The student's assigned Disability Specialist and the course instructor then engage in written communication to discuss the instructor's concerns. The email conversation may include:
 - a. Discussion of tools or resources needed to implement the accommodation.
 - b. Whether the accommodation would require substantial course or program alteration which could include affecting the course learning outcomes stated on the course syllabus.
 - c. Whether the accommodation would lower academic standards.
 - d. Possible alternative accommodations that would allow for the student to have equal access to the course.

During this discussion, as appropriate, the instructor will usually be asked by DSP to provide a copy of their syllabus and other relevant course materials (such as grading rubrics or assignment descriptions) and to address four questions:

- a. What task would the academic accommodation fundamentally alter?
- b. How is that task tied to a course goal or objective?
- c. How would the student doing the task differently—or not at all—prevent them from meeting a course goal or objective?
- d. What other academic adjustments have been considered in order to accommodate the student?

The answers to these questions and the copy of the syllabus will be recorded in the Accessible Information Management (AIM) system.

6. If DSP and the instructor then agree that the accommodation described in the LOA is not a fundamental alteration of the course, the informal process between DSP and the instructor ends, the resolution is shared with the student, and the instructor implements the accommodation in the LOA.
7. If DSP and the instructor concur that the accommodation contained in the LOA is a fundamental alteration of the course, and if alternative accommodations have been explored and

documented, then the student will be notified in writing of the outcome and the reasons why the requested accommodation was determined to be a fundamental alteration.

8. If the student disagrees with DSP and the instructor's joint conclusion, the student may seek to appeal the decision through the DSP Complaint Resolution Process. The student also may submit a complaint to the Office for the Prevention of Harassment and Discrimination.

Resolution of Disagreements between DSP and Instructors Regarding Fundamental Alterations
(*Definitions and additional information can be found in Appendix A)

If, at the end of the above process (i.e., #1-5), DSP and the instructor disagree regarding whether an accommodation would fundamentally alter the course, then:

1. A DSP supervisor or manager, if not yet involved in the effort to resolve the issue, will join the conversation.
2. The Chair, Dean, or other representatives of the instructor's academic unit may be invited to communicate with the DSP supervisor and the instructor to discuss the disagreement.
3. DSP and/or the instructor may invite the ADA Coordinator or their delegate to join the conversation.
4. DSP and/or the instructor may invite a representative from the campus Office of Legal Affairs to join the conversation.
5. DSP will document the results of any such discussions via email to all participants in the conversation.
6. If such discussions do not lead to a resolution, then documentation of all of the above steps, including the deliberation of the four key fundamental alteration questions, is elevated by DSP to the Vice Provost for Faculty. All those involved in the above discussion are copied on the message to the Vice Provost for Faculty.
7. The Vice Provost for Faculty makes the final decision for the campus regarding the fundamental alteration concern and determines any appropriate accommodation for the course. As part of their decision-making, the Vice Provost for Faculty may ask for more information from the participants in the interactive process and may also consult with relevant subject matter experts, including the Executive Director of DSP and the campus ADA/Section 504 Compliance Officer.
8. The Vice Provost for Faculty's determination is provided in writing to all participants in the discussion.
9. The student may submit a complaint regarding the Vice Provost for Faculty's decision to the Office for the Prevention of Harassment and Discrimination.
10. The instructor must implement the accommodation determined by the Vice Provost for Faculty.
If the instructor does not concur with the determination of the Vice Provost for Faculty:
 - a. If the instructor is an Academic Senate member, they may file a grievance with the Academic Senate Privilege & Tenure Committee.
 - b. If the instructor is a Unit 18 member, they may file a grievance pursuant to the procedure contained in their current UC/AFT contract.

The filing of a grievance by an instructor does not suspend the instructor's obligation to provide the accommodation as determined by the Vice Provost for Faculty.

Documentation

In accordance with the UC Records Management Policy, and applicable policies, all documentation must be retained from this process and will be recorded in the student's record in the Disabled Students' Program's data management system, AIM.

Timing

The process described above should be completed as soon as possible, typically within two weeks. If there are delays in the process, the reason(s) for those delays must be documented.

The "Undue Burden" Response. An academic adjustment constitutes an undue burden when it creates unreasonable financial or administrative costs. **This argument is almost never successful** because the University must consider "all resources available for use in the funding and operation of the service, program, or activity."¹¹ This basically means the budget of the whole campus. Unreasonable administrative burden is similarly hard to demonstrate because it requires showing that the adjustment sought is administratively unfeasible (e.g., the creation of an alternate exam format that would require two years to construct).¹²

VI. Common Academic Adjustments.

Below is a list of academic adjustments commonly found in LOAs, along with some adjustments that never appear in an LOA. This list is not exhaustive. Appropriate academic adjustments are determined on a case-by-case basis for each student based on individual need in a specific course or program:

Generally Reasonable: Auxiliary Aids/Services; Adaptive Technology; Accessible Furniture; Extended time on exams and quizzes; Private/Semi-private exam settings; Note taking services; Priority Registration; Accessible Materials Classroom; Recording; Make-up Exams

Possibly Reasonable: Remote Participation/Exams; Flexible Attendance; Flexible Participation; Extended Deadlines; Use of Exam Aids (e.g., calculator; memory card)

Not Reasonable: Personal Aids/Services (e.g. help with self-care); Individualized Instruction/Tutoring; Individually Prescribed Device

VI. Auxiliary Aids & Services.

¹¹ 28 C.F.R. § 35.164. Generally, financial undue burden is not a consideration in the context of academic adjustments since the budget of the entire campus or UC is taken into account when accounting for, "all resources available for use in the funding and operation of the service, program, or activity." Financial undue burden may be considered in other contexts, however, such as physical access barriers.

¹² See, *Rawdin v. Am. Bd. of Pediatrics* (2014) 582 Fed.Appx. 114, 117.

The campus provides auxiliary aids and services to students approved for such accommodations. Auxiliary aids and services provide an opportunity to effectively communicate in the classroom environment for students who have disabilities that affect hearing, seeing, speaking, reading, writing, remembering, or processing information.¹³

DSP and instructors should honor the disabled person's requested auxiliary aid or service, unless DSP can demonstrate that another equally effective aid or service is available, or the instructors or DSP proves that use of the preferred aid or service would result in a fundamental alteration in the course/program or in an undue financial and administrative hardship to implement.¹⁴

The following is a list of common auxiliary aids and services:

- qualified interpreters
- qualified readers
- note takers
- screen readers
- Communication Access Realtime Translation (CART)
- accessible written materials
- assistive listening devices
- text telephones
- open or closed captioning
- video interpreting services
- taped texts
- audio/video recordings
- Braille materials
- large print materials
- material in electronic format
- ASL interpreting
- telephone amplifiers

Recordings are an Accommodation. Class recordings are a recognized auxiliary aid and should be provided to students for whom they are approved. While instructors may have concerns around academic freedom, the Department of Education does not recognize academic freedom as an

¹³ "A public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity." 28 C.F.R. § 35.160(b)(1).

¹⁴ "In determining what types of auxiliary aids and services are necessary, a DSO must give primary consideration to the requests of individuals with disabilities." (28 C.F.R. § 35.160(b)(2).

appropriate defense for denying a student this academic adjustment, if such a denial precludes the student from participation in the class.¹⁵

In lieu of denying class recording as an accommodation, students may be required to sign a contract that prohibits the unauthorized sharing of any recordings of classroom activities. Neither the recording nor the contract need be disclosed to anyone beyond the instructor. Instructor questions about class recordings as an accommodation should be addressed to the DSP Specialist listed on the LOA. A reasonable response time would be 3-5 business days. If there is no response, instructors can email dsp@berkeley.edu for assistance or call 510-642-0518.

Technology Policies. Some instructors have a “no technology” policy in class as a way of reducing distractions and helping students focus more effectively. Such a policy may not be invoked to prevent a student from using auxiliary aids. In addition, instructors should be mindful not to stigmatize or “out” students with disabilities, for example, in a “zero technology” classroom, by placing all of the disabled students who are allowed to use a computer in the front of the room so that they don’t “bother” the rest of the students. Students with disabilities must be allowed to sit where they wish, just like all other students. In this instance, a better policy, if an instructor is opposed to the use of technology, would be to allow all students to petition to use a computer to take notes if they feel it is essential to their learning. That way, students with disabilities would not be the only ones using computers and would, therefore, not be outed when they used one. DSP advises wording on the syllabus that states, “students who need a laptop should contact the instructor to request an exception.” In this way, you can avoid specifically singling out students with disabilities.

Timely Identification of Course Materials. Many DSP students need DSP’s alternative media program to modify course texts and other materials so they can access them (i.e., create a Braille version of a book). The students must submit alternative media requests to DSP ahead of the semester so they can have them on day one. Thus, instructors should aim to tell students well ahead of the academic terms what course materials they will be using. The Office of the VP for Undergraduate Education sends reminders with deadlines for posting of course materials twice a year, ahead of the spring and fall academic terms.

VII. Proctoring model when academic adjustments are required for test taking.

Instructors must plan to ensure a test-taking space and proctoring services different from those provided for the rest of the class when a student has extra time, or a different testing space, date or time, as an academic adjustment.

¹⁵ “College teachers may believe recording lectures is an infringement upon their own or other students’ academic freedom, or constitutes copyright violation. The instructor may not forbid a student’s use of an aid if that prohibition limits the student’s participation in the school program.” ([Department of Education, Office of Civil Rights](#); “A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient’s education program or activity.” [28 C.F.R. § 35.104.44 \(b\)](#); “[a]ny prohibition against the use of tape recorders ... may not be adopted.” ([PACAOS 143.33\(b\)](#)).

The Berkeley campus has limited space and proctors available through DSP. As a result, the campus has long used a shared model for test accommodations and proctoring services. Academic departments and instructors are primarily responsible for providing testing accommodations to students with disabilities. DSP provides proctors and space in the event that the department or instructors do not have the resources to provide these accommodations.

Generally, instructors provide accommodations within their department for students who require accommodations like 150% time and a reduced distraction environment. DSP preserves its proctoring services for support of students who require 200% (or more) time, a room alone, a scribe, use of a computer, etc. [This procedure](#) is posted on the DSP website.

When instructors need to request proctoring services from DSP, they should go into the Accessible Information Management ('AIM') system and submit 'testing agreements' for each test for which they need support. Requests must be submitted 5 business days before regular tests/quizzes, and 10 business days before finals. However, it is best to submit these when your semester begins. [More information on the process can be found on the "how to submit a testing agreement" page of the DSP website.](#)

If the instructors *and* student (students need to schedule their exams after the agreement is made) are able to meet the deadlines currently in place, DSP will provide proctoring services. The current timelines allow DSP to schedule space and proctors. Finals are 10 business days so DSP can secure additional rooms from the registrar if needed. It also allows the staff to have the exam printed and ready. Students receive notification of their exam details 2 business days before their exam. Again, if a student has met the turnaround times for submitting their request, they will be seated. This model works well when instructors are able to manage 150% time and reduced distraction accommodations.

Providing testing alternatives. Providing proctoring services to a number of students, each with different disabilities and accommodation requirements, can be challenging. Support for instructors who may wish to consider if there are other ways of assessing student learning besides in-person exams can be found through the Center for Teaching and Learning, e.g. projects, papers, or in-class presentations. Such alternative modes of assessment can potentially reduce the need for accommodations and, in some cases, allow you to evaluate student learning at a deeper level than in-person exams.

Some instructors are turning to remote exams as an alternative way to meet accommodation requirements. Instead of seeking distraction-free classrooms on campus, instructors can allow students to take the exams at home, in the library, or anywhere else that is convenient. Remote exams can also help with the provision of extra time. Instead of locating additional classrooms for students receiving 150% time, instructors can provide the extra time to students wherever they take the exam. Of course, remote exams can raise concerns about academic integrity. For ideas about how to prevent cheating along with information about remote exams more generally, see the [Academic Senate website on best practices in remote examination](#).

VIII. Service Dogs & Emotional Support Animals in the classroom.

A Service Dog ('SD') is a dog that is trained to do work or perform a task or tasks for a disabled person. The work or tasks performed must relate directly to the disability. Disabled people who use SDs are protected by the ADA and **SDs generally must be allowed into all campus spaces their user goes into, including classrooms.** SD users are not required to apply for permission to have their SDs with them on campus. Campus cannot require any documentation.

If an instructor is concerned about a SD's presence in a specific space, the instructor should immediately address the concern with DSP to determine if there are mitigating strategies. Allergies or fear of dogs are generally not sufficient to deny a SD user the right to bring their SD into a space. Generally, only a dog that is dangerous, disruptive, out of control, or not housebroken can be denied entry. In those cases, the dog user must be offered the opportunity to leave the dog outside and return to the classroom. **Never deny entrance to a dog that is, or is purported to be, a SD without first speaking with DSP.**

An Emotional Support Animal (ESA) can be any kind of animal used by a disabled person for emotional support, well-being, or comfort. ESAs are not trained to perform work or tasks; their presence alone provides comfort that alleviates symptoms of disability. Disabled people who use ESAs are protected by the Fair Housing and Employment Act. Where their ESAs are designated as an 'academic adjustment,' they are also protected by Section 504 of the Rehabilitation Act of 1973. Documentation is required to prove an animal is an ESA and the campus requires this documentation.

Can ESAs be in the classroom or lab? Section 504 of the Rehabilitation Act of 1973 requires universities to modify policies for otherwise qualified individuals with a disability to ensure they are not excluded from the participation in, or denied the benefits of, university programs or activities. As such, if the presence of an ESA in the classroom means a student can participate who otherwise would be unable to participate, the university will consider the request for in-classroom use of an ESA as they would any other request for academic adjustment.¹⁶ At Berkeley, DSP is mandated to make determinations about whether to allow an ESA into the classroom as an academic adjustment. In doing so the DSP Specialist considers:

- Can the student participate without the animal? Have they done so historically? If yes, what's changed?
- Does the animal's presence mitigate symptomology directly related to a student's ability to participate meaningfully in a course? If yes, how?
- Is there any other way the student's symptomology can be reasonably mitigated other than the presence of the animal in a classroom?
- Is the animal well trained and able to sit quietly at the student's feet (or in a pet carrier)?
- Is the ESA a well-trained, domestic, house pet?

¹⁶ [Letter Regarding the Resolution Agreement with Pennsylvania State University](#), OCR Complaint No. 03-18-2103 (Aug. 28, 2018); 96 Penn State Resolution Agreement.

Service Dog, Emotional Support Animal, or Pet? When it is not obvious what category an animal falls into, limited inquiry is allowed. Instructors may ask only two questions to determine if a dog is a SD: (1) is this a Service Dog required because of a disability, and (2) what work or task has the dog been trained to perform for the disabled person? For purposes of a classroom or lab, instructors and staff may not ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task. An instructor or staff member in a classroom or lab will know an animal is an ESA because the animal will be an approved academic adjustment included in the student's LOA. If the animal is neither of these, it is a pet and is not allowed in campus buildings.

Service Dogs, ESAs and leashing. Under the ADA, SDs must be harnessed, leashed, or tethered, unless the individual's disability prevents them from using these devices or these devices interfere with the service animal's safe, effective performance of tasks. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls. ESAs should be harnessed, leashed, tethered, or placed in a proper pet carrier.

IX. The Prohibition against Blanket Denials of Certain Academic Adjustments.

While the campus is not required to lower its standards or waive its policies in general, both the ADA and Section 504 of the Rehabilitation Act prohibit blanket denials of academic adjustments.¹⁷ Whenever a student requests an academic adjustment to a class task or a general policy, we must make an individualized assessment and determine if the request would be a reasonable accommodation.¹⁸ To avoid confusion or the appearance of blanket policies, avoid stating on syllabi or websites that there will be no exceptions to a late drop, attendance, technology, semester/unit cap, or other policy, without also including a note that "If you are registered with DSP, please discuss this policy with your DSP Specialist." In this way students are encouraged to begin the interactive process, and instructors open the door to individualized assessment.

¹⁷ 34 C.F.R. § 104.44(a).

¹⁸ Guckenberger v. Boston University, 957 F. Supp. 306 (D. Mass 1997)

Appendix A: Definitions

Fundamental Alteration

Any change to a course 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 of the course.

Cal. Code Regs. tit. 5, § 56001(b)

Course Goal or Objective

The learning outcome of the course; the knowledge that the instructor expects the students in the course to acquire and demonstrate mastery of in course assessments.

Resources

This process has been developed through collaboration between Disability Access and Compliance (DAC), Disabled Students' Program (DSP), [DSP Faculty Liaisons](#), Academic Senate leadership, and the Vice Provost for Faculty and in consultation with the Office of Legal Affairs.

If you have any questions about this process, please contact Disability Access and Compliance at access@berkeley.edu.