

Academic Accommodations

Fundamental Alteration and Undue Burden (2/4)

PROVIDING REASONABLE ACCOMMODATIONS

The University of California is committed to ensuring that students with disabilities are provided with full and equal access to its programs, services, and activities.¹ This commitment includes making alterations and adjustments to courses or programs unless doing so would (a) modify academic requirements that are essential to the instruction being pursued or directly related to a licensing requirement, (b) lower academic standards, or (c) substantially alter the course or program (i.e., fundamentally alter the nature of the course or program).² **Academic Accommodations that present a fundamental alteration or undue burden are rare**, and these defenses may only be used to deny an accommodation after careful consideration by relevant University officials (See, [The Fundamental Alteration Process](#), below).

Courts and the Office for Civil Rights will grant deference to professional and academic judgment in denying an accommodation on these bases only when the denial is rationally justifiable and where there is a factual record of a thoughtful review of the request for accommodation.³ **Faculty must, in collaboration with their Disability Services Office (DSO), exercise careful and documented deliberation consistent with this guidance before denying any academic accommodation.** In the event the University determines that making modifications would result in a fundamental alteration of a service, program, or activity, it will continue to engage in the interactive process to ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services.

THE FUNDAMENTAL ALTERATION PROCESS⁴

Determining whether an academic accommodation would constitute a fundamental alteration is decided on a case-by-case basis and requires careful and reasoned deliberation⁵ of the specific request *prior* to the refusal to provide such an accommodation. The university must examine the methods of instruction and assessment to determine how information is taught and what reasonable alternative opportunities are available for teaching and learning the information, the format of materials, and demonstration of necessary skills. Adapting how a specific course is conducted for a particular student may be appropriate depending on the nature of the course and the requirements identified in the course syllabus and/or program technical standards.⁶

Only the head of the public entity, or their designee(s), may decide that a proposed academic accommodation would fundamentally alter a course/program after considering all resources available for use in the course/program.⁷ Final decisions must be in the form of a written statement and contain the reason(s) for the decision.⁸

Reasoned Deliberation

When a faculty member believes an academic accommodation proposed by the DSO may constitute a fundamental alteration, they must immediately consult with the DSO/specialist proposing the accommodation. Faculty may not unilaterally refuse to implement an accommodation outright. While each campus process may differ slightly, all decisions regarding fundamental alteration must be carefully deliberated in accordance with the following criteria.

In Preparation for 'Reasoned Deliberation' with the DSO/Specialist, Faculty Need To:

1. Review and identify the essential academic standards or objectives of the course/program at issue.

¹ PACAOS 140: Guidelines Applying to Nondiscrimination on the Basis of Disability.

² 34 C.F.R. § 104.44(a).

³ 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.

⁴ While the ADA does not expressly define "fundamental alteration" the California Code of Regulations is instructive in its definition: "Fundamental Alteration: A fundamental alteration means 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).

⁵ See, *Guckenberger v. Boston University* (1998) 8 F.Supp.2d 82, 87–89.

⁶ 34 C.F.R. § 104.44(a).

⁷ Regardless of whom the University designates as the Designated Authority as to whether a proposed accommodation would fundamentally alter a course or program, "in order to receive ... deference, relevant officials within the institution are required to have engaged in a reasoned deliberation, including a diligent assessment of available options." OCR has stated that an appropriate deliberative process should include **a group of people** making the decision who are trained, knowledgeable, and **experienced in the relevant areas.**" (OCR Letter to Kent State, Case No. 15-21-2136; *emphasis added.*) "Relevant officials" should include persons knowledgeable about the student's disability (e.g., DSO staff), the course or program (e.g., faculty and/or department chair or dean), and disability law (e.g., ADA Coordinator).

⁸ 28 C.F.R. § 35.164.

2. Articulate the specific requirements of the course/program that are fundamental to meeting the essential academic standards or objectives.
3. Define the unique qualities of the specific requirements and their nexus to the essential academic standards/objectives.
4. Describe how the proposed accommodation would fundamentally alter essential academic standards or objectives of the course/program.

Faculty and DSO Specialist Together Must⁹:

1. Engage in “reasoned deliberation” as to whether modification of the specific requirements would lower academic standards, fundamentally alter learning outcomes, or require substantial (unreasonable) program alteration. Document how and why a proposed accommodation would lower the academic standards or require substantial program alteration. The University must provide the accommodation if it does not lower standards or substantially alter a program.
2. Determine whether there are available alternative means a student could demonstrate the essential academic standards or objectives of the course. Document the discussion about proposed alternatives and why they were determined to be, or not to be, a reasonable accommodation.
3. If the faculty member and the DSO do not agree, they must work with their campus’ Designated Authority(ies)¹⁰ in accordance with the established escalation protocol for that campus.
4. Document the deliberative process as noted above and state who participated in the deliberation and who made the final decision(s). Retain this document in accordance with the UC Records Retention Schedule.

While faculty need to work with students to implement approved accommodations, faculty should not refuse to implement an accommodation nor should they debate the reasonableness of an academic accommodation directly with a student. Only discuss these concerns with the DSO/specialists who have the requisite training and experience.

UNDUE BURDEN

Undue burden refers to an unreasonable financial or administrative burden. In considering whether an accommodation is an undue financial burden, the University of California must consider “all resources available for use in the funding and operation of the service, program, or activity.”¹¹ While cost may be considered, the fact that providing a service to an individual with a disability would result in additional cost does not of itself constitute an undue burden on the program. An unreasonable administrative burden is not one that is merely inconvenient, rather it denotes something that presents “significant difficulties or expense when considered in light of a number of factors, including the type of service or product being offered.”¹² Faculty may not unilaterally deny a request for an accommodation based on undue burden, rather must consult with the DSO/specialist noted on the Accommodation Letter to discuss the proposed accommodation and consider alternative accommodations in the event an accommodation is determined to constitute an undue burden.

⁹ *Wynne v. Tufts Univ. Sch. of Med.* (1991) 932 F.2d 19, 25–28.

¹⁰ 28 C.F.R. § 35.164; See also, footnote 7.

¹¹ 28 C.F.R. § 35.164. Financial undue burden is not a reason to deny an academic accommodation because the courts consider the budget of the entire campus or UC when accounting for, “all resources available for use in the funding and operation of the service, program, or activity.” The University may consider financial undue burden in other contexts, however, such as physical access barriers.

¹² *Rawlin v. Am. Bd. of Pediatrics* (2013) 985 F. Supp. 2d 636, 656; *Aff’d*, 582 F. App’x 114.