

Q&A From CAPED Pre-Conference ADA/504 Workshop

Introduction:

Here are the questions and answers from the CAPED ADA/504 session. The answers provided are not approved by either the Chancellor’s Office or OCR, they are purely the musings of those present at the session and must not be construed as anything other than opinions from experienced professionals.

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Several of the questions raised were combined for both clarity and brevity.

LD Issues

In light of the devastating budget cuts to DSPS, many colleges have discontinued their learning disabilities eligibility testing, as it's not specified as a "mandated service." What are the legalities of this? Many students come to community college never having been assessed, without a history of Special Ed and do not have health insurance or other resources to secure an evaluation on their own.

Are there any legal guidelines about the age of documentation that can be used in determining eligibility for LD services? We are counting many students with older records as "other", rather than LD, due to staffing cutbacks that prevent us from conducting LD assessments needed to determine CCC LD eligibility. Some of these students with older LD documentation have adult testing, while others have assessments and IEPs from high school.

Within the Department of Justice, there is new regulatory language for testing in ADA, Title III. [§ 36.309 Examinations and courses](#). It says that considerable weight should be given to a history of previous accommodations and history of services that were provided under an IEP or 504 plan. If records from middle school show a history of accommodations being provided, accommodations are warranted. A testing entity should accept without further evaluation the accommodations that have been provided in the past. Considerable weight is particularly warranted when extra time and a quiet room for testing were provided and the student is seeking the same with another entity. The college should clearly grant the testing accommodation. This change indicates that standards don't have to be as rigorous as have been observed in some settings. If you are short of resources, go with qualifying based on past documentation given the guidance from the ADA regulations.

This new guidance highlights a difference between civil rights and state funding issues. The college may not be able to determine LD eligibility, but that doesn't mean the student does not have a disability and is not entitled to accommodations. It may be appropriate to count the disability as "other" and change it later. This might be possible if the program can do an LD assessment or the student is able to bring in more documentation. In making the determination, engage the student in the interactive process and discuss changes that have occurred over the years, such as the services used, how they were used, changes in technology and how accommodations provided. DSPS must use professional judgment in these decisions. If in doubt, do not hesitate to contact your regional [LD Field Advisory Representative](#) for advice.

Timeliness of Services

Due to budget cuts, many staff have been cut from programs resulting in waiting periods to receive services. What suggestions can be offered to improve the timeliness of service delivery?

First and foremost, it is important to recognize that the ultimate responsibility for provision of services and accommodations rests with the district and/or college, not the DSPS

program. Remind the college administration that the proportion of cuts to DSPS has been greater than cuts in general funds of the college. Costs now are considerably less than lawsuits later. It is important to consider strategies when there is no funding available. It is not acceptable to tell students they have to wait to receive services. As a guideline, three weeks can be used as the maximum acceptable waiting time for services. Think about triage; continuing students asking for the same accommodations they have received in the past don't need to see a counselor. New students can be given priority for counseling appointments and starting accommodations. In the case of new students, start the services and do not wait until all the documentation is in. Legally, there is no requirement for an individual interview, so the process can be a paper process handled by DSPS Counselor or Coordinator. Remember that all requirements of documentation have to be met in order to claim the student for funding, but the college has an obligation under Federal law to provide the services.

Some ideas to get more money and collaboration are useful, so try these first. For example, programs can go to the district for basic skills funding (BSI), construction funds, or VTEA funds. Additionally, collaboration with faculty senate and partnering with other programs, such as EOPS or General Counseling, may help with DSPS students. Also, collaborate with community partners such as the Regional Centers and Department of Rehabilitation. VR Counselors can help with counseling and academic planning and disability issues on campus. Think creatively about where to find funds; establish a foundation for the department and do fundraising activities.

Encourage community members, parents and students to advocate with the Board for the program and their needs. Likewise, students can file OCR complaints. If several students file for same issue, it will help to get a response. Be aware that OCR's funding has been cut also.

Offer sensitivity training on campus to develop a greater understanding of civil rights and legal responsibilities, so that consumers feeling supported.

Course Substitution

How do you respond to the concept of Academic Freedom as a means to refuse to accommodate a student with a disability? We are hearing more and more from faculty that to accommodate in certain ways infringes upon their right to academic freedom. It would be great to get legal commentary, as well as any citations to previous OCR findings addressing Academic Freedom vs. ADA/504/CA laws and regs.

The term academic freedom actually has multiple meanings. Some see it as a first amendment right whereby faculty can say what they want to without repercussions, provided their remarks don't cross into harassment or discrimination against race, religion, or disability. However, this doesn't include the right to deny others their statutory rights. With this interpretation, academic freedom would not be clashing with accommodations; it is simply free speech.

Another interpretation involves academic freedom seen as the right of the institution, not the individual. As demonstrated in [Guckenberger v. Boston University](#), [Wong v. Regents of California](#), and [Wynne v. Tufts](#), the courts are looking at balancing civil rights and academic freedom in terms of whether a substantial alteration to the course would be required. For example, speed must be part of the academic program for Emergency Medical Technician training.

Academic freedom is sometimes interpreted by faculty as the collective right to make decisions about curriculum and academic standards. In community colleges, as a result of curricular responsibility, there should be a policy developed by academic senate that addresses course substitution and academic adjustments. It is advisable to have a set of rules in advance to handle these situations. Remember that the institution is the responsible entity under 504 or ADA. After having gone through the process, the institution will be given some deference for this effort, if a complaint is lodged with OCR.

In another interpretation, if a letter is sent to faculty advising that an accommodation has been approved, but the instructor will not allow the accommodation, DSPS has the responsibility to take the matter to the authority within the institution who has the responsibility to make and implement the final decision. At a minimum, the student could file a grievance.

What case law gives evidence to the fact that the college should not make a student take math 1-3 times and fail before they receive a substitution as an accommodation for a math LD?

The [OCR decision](#) made at Mt. San Antonio College is the best response. If the purpose of having the student fail is the only way to evaluate that they have a math disability, this is not the right approach. The student should instead have a psycho educational assessment for a math disability. If a student takes the class once and fails, s/he should not be forced to repeat the class. However, if the student didn't participate in the class and failed, not because of disability, but their behavior, then it is not disability-related. To be practical, the student could be required to attempt the course one time, but not multiple times. The bottom line is that multiple failed attempts will only serve to discourage the student.

If the college requirements are in line with the state requirements for graduation and the state says the college can't grant a degree without meeting this minimum, the college could raise the issue with the state or the student could file a complaint with the Chancellor's Office.

The question of what the student is trying to achieve must be considered. For example, if the student is a math or engineering major and can't pass basic math, then the student needs to know this limitation. However, if the student is pursuing a major in art or many other areas, this student may not need algebra in their career or degree.

There is a significant difference between a course waiver and a substitution. Waiving a requirement, if it's an established academic requirement, may not be a reasonable accommodation. Determining whether to approve a substitution is an expertise question. If a DSPS professional evaluates the documentation and determines that the student probably won't be able to pass, providing the substitution would be the appropriate course of action. As long as a diligent and reasonable process has been employed to determine the substitution, OCR would likely defer.

Course Substitution Example: A student with limited use of her hands took an American Sign Language course. The first time she took the course, she passed; evaluation was based on only receptive skills. When she took a second course, she wasn't successful because both expressive and receptive language were required. This is an example of a fundamental alteration question. Ultimately, one should check the course outline of record. If the course outline of record requires both expressive and receptive language skills, then modifying that is a fundamental alteration. In a case like this, there may be a concern that faculty are using different grading systems. If the institution can make a rational argument for why it's necessary, OCR would likely defer.

The important question is to determine why the student is taking the course. Is this course taken to meet the language requirement or does this student want to be an interpreter?

There is a system of modified signs that was created by King Jordan from Gallaudet. This may be a system that would be appropriate for this student to use.

Testing Accommodations

What is the nursing/allied health program at a college required to provide as a reasonable accommodation in the following:

Classroom exams

Assessment of technical application ability, i.e., giving injections (time and ½?)

There was a complaint that originated at Los Medanos a few years ago that was addressed in the Chancellor's Office. In terms of in-class testing, the determination was that students are entitled to extra time and other accommodations. In clinical application, a student may be entitled to certain accommodations, i.e., extra practice of tasks. However, when technical application of learning is being tested, a student would have to meet the same standards as other students. This is especially true if the skill involves a health and safety consideration. There may be different standards for different tasks. Assess if health and safety issues apply to the particular task. For example, a student may be granted extra time in relation to setting up their work area, but in performance of the technical activities, the student will need to meet the time requirements. Otherwise, this presents a fundamental alteration.

How many testing center hours for accommodations are reasonable? What are the rules for testing accommodation hours?

The expectation is that students should be provided the opportunity to take their exam on the same schedule as their non-disabled peers. Ideally, testing accommodations should be offered in both evening and Saturdays to align with the regular class schedule. When an OCR complaint addressed this issue, particularly in terms of evening and weekend classes, OCR actually supported DSPS extending hours, in order to improve services.

There may be circumstances where the college would allow for some flexibility in time; this would call for an interactive process to make adjustments. An example would be when two exams are given on the same day and the provision of extra time interferes with offering the test at the same time that the rest of the class is taking that exam. It would be advisable to have the instructor and student sign off on the schedule change. Also, it is not necessarily only a DSPS responsibility; there may be assistance available through the learning resource center or assessment center. Think creatively about who might be able to help you with proctoring.

Priority Registration.

Can we provide priority registration for concurrently (high school) enrolled DSPS students?

Yes. It is important to note that when provided as part of a disability accommodation, priority registration should not be limited to continuing students, but be available to new students, as well, if they have a disability related limitation in the educational setting where priority registration is used to enable the timely provision of an accommodation. For example, high school students with disabilities who need priority registration to ensure an accommodation based on their functional limitation(s) should be allowed to register in the spring priority registration period for the fall, rather than having to wait until registration opens up to other high school students. (Excerpted from the Priority Registration FAQ issued by the Chancellor's Office in 2009).

Mobility/tram service

We have a large sprawling campus with variable terrain. Are we required to provide a mobility cart service?

Under Section 504 of the 1973 Rehabilitation Act and the Americans with Disabilities Act, a college is obligated to make special accommodations to assure access to the general college services and instructional process to students with a documented disability. The college has responsibility to ensure equal access. Specialized transportation around the campus may be the best method of ensuring equal access on large campuses, or difficult terrain, where students may have difficulty accessing classes and services.

Financial Aid

Can a student with a disability utilizing DSPS services receive a full-time exception under financial aid regulations as an accommodation?

No. The U.S. Department of Education defines full time for a standard semester term as at least 12 units, which can be found in Volume 3, page 4 of the 2009-10 [Student Aid Handbook](#). Professional judgment cannot be used to change the definition of full time as defined in the same handbook in the Application and Verification Guide on page 105. The guide states that professional judgment can only be used to change data elements that lead to a change in the student's EFC or to adjust a student's cost of attendance.

Confidentiality

Are shared education plans and/or shared schedules among DSPS, EOPS, CalWorks, and Counseling a breach of confidentiality for DSPS students?

No, under FERPA certain educational records can be shared without breaching confidentiality. However, you are advised not to share diagnostic records.

Physical Access

One of our administrators asked a student to go around campus to find physical access problems. The student came back with three pages of physical issues. Since the administrator solicited issues and was notified of the student concerns, what is the timeline for fixing the issues and how liable is DSPS and the college?

DSPS is not responsible; it is a college responsibility to provide access. Every college should have a transition plan that is reviewed and updated and the college should be actively working towards accomplishing the goals outlined in the plan. It is also recommended that a facilities expert be consulted to determine if the issues are actually physical access violations. Conversely, it would be essential to check whether the student may have missed other violations. DSPS would need to work with the college's 504/ADA Coordinator. The college should have a budget attached to the transition plan for making the modifications that are needed. Be advised that physical access is also reviewed during the accreditation process. ([Huezo v. LA City College- applicable decision](#)).

Accessible Furniture

How many accessible furniture stations need to be available? What is ADA compliant?

Access laws deal more with architectural issues rather than movable items like furniture. The important consideration is whether you are willing and able to bring in furniture when it's needed. Can you get it quickly and who has authority to do so. This would be more a matter of looking at the process of an accommodation, bringing in furniture when requested. If specialized, stationary equipment is in the classroom, like a chemistry lab (fixed height with limited number of stations), requirements about how many accessible stations would be provided in [ADAGG](#).

Direct threat

What, if anything, should a professor do when a student voices or otherwise expresses a direct threat toward a person or group? What if the student has not disclosed a disability,

but the instructor is aware that the student making the threat is a veteran? What if substance abuse is suspected?

The suggestion would be to meet with the student privately. The professor may want to consult with psychological services, DSPS or discipline support available on campus. It may also be appropriate to include representatives from these departments in the meeting, if the faculty member is not comfortable addressing the threat by him/herself. Recognizing that the student hasn't disclosed that they have a disability, this incident could present a good opportunity for a referral to campus support like DSPS or a Veterans Resource Center. At a [Veterans Resource Center](#) support and understanding are the major goals. A Vet Center can be run and staffed by Vets who provide the needed peer support. Most Vets will seek support by staying in contact with buddies from their units, but the local Vets Center is a good resource, as is the Student Health Center.

There may be campus procedures that require such an incident to be reported to a discipline officer on campus. If the college has a rule against students coming to class drunk or high, this veteran should be held to the same standards of conduct as other students. Next, set conditions upon which the student can come back to campus; these are basically accommodations. If the student is suspended, refer him/her to a Vet Center for treatment and require recommendations from the treating professional for readmission.

If there is a reasonable basis to believe that this individual represents a threat to the health and safety of self and others, s/he doesn't meet technical standards for continuing at the institution. A student can't be a direct threat to health and safety and, therefore, is not a qualified individual with a disability. The institution must pay for an independent medical exam to determine whether the student is a direct threat (can't require student to pay). This is a situation that is a judgment call with a range of options. For example, a review by disciplinary council could be conducted or the student might be required to see someone at the VA treatment center and then have monthly checks on behavior.

This type of incident might also be a precipitating incident leading to faculty training or in-services. Faculty could benefit from an annual training session on how to handle these situations.

Behavior Issues

When and how can we discontinue services to any students who violate the policies agreed to and signed off by the student with the counselors? (e.g., missing appointments, classes with interpreters, proctored testing, etc.)

When concerning student conduct, an official college disciplinarian should be involved. Vice President of Student Services is often the college's Judicial Officer whose responsibility is to investigate and ask questions and then will act according to law, i.e., follow due process. In these cases, it is important to determine if the student's behavior is related to a disability. In the case of disruption in the testing process, determine the course of action through an

interactive process with the student. Is there an accommodation to allow the student to use the testing process without disruption, such as taking a break?

Secondly, there may be a request to suspend services because a student is not showing up for classes for which an interpreter is being provided. The courts say you really can't terminate services in an arbitrary way; it must be the same for students with and without disabilities. It is recommended that you meet with the student and set conditions, such as, if student shows up 20 minutes late for class by habit, require that the student call within an hour of class to notify you that they will be in class.

As another example, a student brings in psychological documentation that states he has been noncompliant with medications. This individual has identified as a student with a disability. The doctor's disability verification says he has difficulty understanding rules, such as conduct. If the student is suicidal, an independent medical exam may be necessary. The student could be evaluated by their own therapist or in a hospital setting. It is probably in the best interest of the college to have a specialist conduct the evaluation, rather than a primary care physician.

Behavior-Sex Offenders on Campus

What can we do to provide safety for students and inform faculty and staff?

Disability based on criminal conduct is not a disability (pedophilia). This is not an ADA or 504 issue; there are state laws about sex offenders, but these laws have nothing to do with whether the individual has a disability. What is the college policy of dealing with offenders? The Chancellor's Office did a lengthy document [Legal Opinion 07-07](#) about sexual offenders several years ago. The recommended course of action would be to take the issue to campus security.

Retaliation

Many students (and staff) are hesitant to initiate a complaint process for fear of retaliation. How best can we support them and protect them as they move forward?

If your students have concerns, refer them to the youth organization "Take Action for Accommodation," affiliated with the Disability Rights Center (formally Protection and Advocacy). As an organization, they can assist your students in the complaint process. This could provide somewhat of a shield for them and likewise for staff members. In addition, the Chancellor's Office can send a letter to the college President reminding them that they cannot retaliate against the complainants. Go to: Take Action for Accommodations at [Youth Organizing! Disabled and Proud](#) and then go to the tab on the left titled "advocate."

Once a person has filed a complaint they are protected from retaliation, under Section 504 and Title 5. It is unlawful to retaliate against someone who files an unlawful discrimination complaint, who refers a matter for investigation or complaint, who participates in an investigation of a complaint, who represents or serves as an advocate for an alleged victim

or alleged offender, or who otherwise furthers the principles of this unlawful discrimination policy.

Autism Spectrum and Intellectual Disabilities

When a student with an autism diagnosis comes to DSPS, what are the legal expectations regarding appropriate accommodations? What do we do with a student with autism whose psychological/ educational testing results state the following: "*these scores indicate that the above named student is functioning at an overall Borderline Adaptive level. As such, he may find age appropriate tasks to be very difficult.*" Should colleges allow attendants (not paid by the institution) to accompany students to class to help re-direct inappropriate behaviors or prompt students to stay on task? Is it appropriate to provide Notetaking services? Is it appropriate to provide an aide to assist the student? What if the parent is interested in being the aide?

Services to students with intellectual disabilities, including autism, is an emerging issue. Within California, the [Tarjan Center](#) at UCLA is the best resource. The Federal government is currently developing best practices. The college must allow attendants to come on campus and they should be held to the same standards as other campus visitors. The college can hold the student to the same academic standards of the class, as well as standards of conduct. Attendants are permitted for students with severe physical disabilities, so it is equitable that students with intellectual disabilities also be permitted to bring attendants. Regardless, you need to make sure that the student is doing the work themselves, not the parent or attendant.

Any time any person sets foot on campus: student, employee, visitor, etc., there is the potential for liability. Most institutions have policies that address people being on campus who are not students or employees, whether in the classroom or elsewhere on campus. Some colleges require that the attendant be treated as a volunteer or sign a liability waiver. However, you can't require an attendant to sign a liability waiver when other guests are not required to do so.

Santa Monica reports that they have a rigorous system that volunteers on campus must follow which includes fingerprints, signing waivers, etc. A related question that was raised concerned whether or not enough space was available in the classroom to add an attendant, meaning the presence of an attendant could actually take space away from other students. However, if a student needs an accommodation during the class and with the assistance of a personal attendant, they could meet behavioral standards and participate; you could either provide the student with assistance or allow them to bring in someone themselves that they would pay. It seems capacity in the classroom and the argument that you may be required to cut off the enrollment doesn't hold up. If there's room in the class for an extra chair for the attendant, then it's not reasonable to deny the student the assistance of an attendant. If you could demonstrate that there's not physical room because of fixed seating, lab benches, you might be able to justify not having attendant in the classroom.

As for exams and proctoring, it is inadvisable to allow the parent or attendant to be responsible for proctoring. DSPS should use a staff proctor for exams unless there is a special consideration, such as communication.

A related issue is that some colleges offer classes without prerequisites. As a result, anybody can enroll in those classes. Students must still meet academic standards of the college, like grades and progress. If students consistently fail the class, the faculty and college would most likely put proper prerequisites in place. Until a prerequisite is established, any student could take the class. However, a student must respond in some sense, despite extreme intellectual disability. There is a bottom point, i.e., the mother who brought her son to cooking class to enjoy the smells, not acceptable.

Resources for students with intellectual disabilities and autism: [Think College](#), and the [Tarjan Center](#) at UCLA and then go to the tab on education. The California Health Incentives Improvement Project (CHIIP) resources are at [Talent Knows No Limits](#). Other resources can be found at: [Transition to College](#) ; [Think College](#) ; [Transition Coalition](#); [Steps Forward](#); [National Youth Transition Center](#); and the [Pacer Center](#).

Helicopter Parents

We are being overwhelmed by aggressive parents who insert themselves into every aspect of their son/daughter's college experience. The parent attends every counseling session with their son/daughter, but they are also the only one to call about any and all problems. We hear nothing from the student, but the mother or father calls on a regular basis to complain about services. Currently, if a student signs a waiver that allows us to communicate with a parent we honor that. We would like to change our policy and say that we will no longer talk to or meet with any parent without the student present. Our feeling is that if the student cannot communicate with us independently, he or she is not otherwise qualified to be a college student at this time. Can we do that? Can we do that if the parent is a legal guardian?

At the K-12 school level, [FERPA](#) provides parents with the right to inspect and review their children's education records, the right to seek to amend information in the records they believe to be inaccurate, misleading, or an invasion of privacy, and the right to consent to the disclosure of personally identifiable information from their children's education records. When a student turns 18 years old or enters a postsecondary institution at any age, these rights under FERPA transfer from the student's parents to the student. Under FERPA, a student to whom the rights have transferred is known as an "eligible student." Although the law does say that the parents' rights afforded by FERPA transfer to the "eligible student," FERPA clearly provides ways in which an institution can share education records on the student with his or her parents. Under FERPA, schools may release any and all information to parents, without the consent of the eligible student, if the student is a dependent for tax purposes under the IRS rules. The appropriate course of action would be

to consult with your legal department with regard to having the student present at all parental meetings. As far as we know, there is nothing in the regulations that would prevent you from developing such a policy and procedure, providing you followed the policy for all similar situations.

Providing detailed information to the parents about the differences between K-12 and post-secondary education is an important aspect of your interactions. Work with the parents to set ground rules, help them to understand that self-advocacy by the student is a critical component of becoming an adult and being in an adult learning environment.

In addition to the resources listed for the previous question concerning Autism Spectrum and Intellectual Disabilities, the [National Collaborative on Workforce and Disability](#) (NCWD) has a Guidepost for Family Supports.

If the student is under a conservatorship and the parent has limited conservatorship, then different rules apply. The [State handbook](#) Chapter 3 would be the appropriate resource.

Multiple Chemical Sensitivity.

Please provide documentation guidelines for multiple chemical sensitivities and types of reasonable accommodations versus fundamental alterations.

Multiple Chemical Sensitivity (MCS) is a disorder triggered by exposure to chemicals in the environment. Exposure can occur through the air, food, water, or skin contact. Like allergies, symptoms tend to come and go with various exposures, although some reactions may be delayed. An excellent overview of the topic is: [Multiple Chemical Sensitivities \(MCS\): What It Is, What It Is Not, And How It Is Manifested.](#)

Students with MCS may experience difficulties with academic requirements, such as attendance, fieldwork, test taking, completing assignments, and carrying full course loads. Students may also have difficulty with courses that involve the use of, or exposure to, various chemicals such as science labs or artwork. Examples of accommodations for students with MCS might include flexible attendance due to frequent illness, or alternatives to laboratory courses that involve irritating chemicals or materials. Students are often the best source of information about their needs. Faculty should work with the student and DSPS to determine the necessary accommodations for each student, while keeping in mind that accommodation requests may not fundamentally alter the course. Faculty should ensure that their course outline of record contains sufficient detail of course requirements to be able to determine if any of the proposed accommodations would not be an appropriate academic accommodation.

Some suggestions that can be helpful in meeting the needs of students with MCS include:

- Offer priority registration so class-relocation arrangements can be made if necessary.

- Identify “a limited set of classrooms” that can be maintained with few toxic substances, and where the use of such chemicals is well-regulated by staff knowledgeable of alternatives to standard products.
- Notify students with MCS of scheduled maintenance.
- Post a statement in classes used by students with MCS that cleaning products or pesticides can only be used with permission of a maintenance administrator.

Examples of accommodations for students with multiple chemical sensitivity may include:

- Preferential seating near windows that open.
- Providing a well-ventilated space that is free of pollutants such as tobacco smoke, pesticides, toxic and fragrant-laden cleaning products, deodorizers, and exhaust fumes.
- Flexible attendance requirements.
- Attention to chemicals in laboratory work and artwork.
- Alternative assignments.

For more information, consult the following resource:

General Information on Multiple Chemical Sensitivity

[Job Accommodation Network: Accommodation and Compliance Series: Employees with Multiple Chemical Sensitivity and Environmental Illness](#), and [DO-IT: Access College: The Faculty Room: Accommodations](#).

Service and therapeutic animal policies/update

How have the new ADA amendments changed the service animal regulations?

The new rule defines "service animal" as a dog that has been individually trained to do work or perform tasks for the benefit of an individual with a disability. The rule states that other animals, whether wild or domestic, do not qualify as service animals. Dogs that are not trained to perform tasks that mitigate the effects of a disability, including dogs that are used purely for emotional support, are not service animals.

The final rule also clarifies that individuals with psychiatric disabilities who use service animals that are trained to perform a specific task are protected by the ADA. The rule permits the use of trained miniature horses as alternatives to dogs, subject to certain limitations. To allow flexibility in situations where using a horse would not be appropriate, the final rule does not include miniature horses in the definition of "service animal."

The service dog must be housebroken and under the control of the handler.

You may ask a student with a disability to remove a service animal from the premises if the animal is out of control and the student does not take effective action to control it; or the animal is not housebroken.

You cannot ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. You may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. You may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, you may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). Current advice is to stick with the Service Animal policies you have in place, especially if they were developed in cooperation with OCR such as [Cuesta's](#) until such times as there is either case law or Department of Justice/OCR guidance on this issue. State laws on licensing of dogs must still be adhered to.

Who pays for accommodations? Distance Education and Interpreters Abroad

What is our responsibility to provide accommodations for one of our students taking a distance education course from another college?

The host college, the college where the student is registered for the class, has the responsibility for approved accommodations. The fact that the course is offered through distance education versus on campus is not a factor. Encourage the student to register with DSPS at that college, work with the student and host college DSPS to share information to smooth the path for this student to receive the accommodations in a timely manner.

What is our responsibility to provide accommodations, especially interpreters, for students who are studying abroad? Decisions regarding accommodations for study abroad programs are complex. The 1990 Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 provide a guide for institutions to assist them in developing policies and practices. Legal precedents from court decisions, settlements, and administrative rulings from the Office of Civil Rights (OCR) shape policies and practices as does each institution's mission statement. It is recommended that institutions use their mission statement as a guide and consult their legal counsel when balancing associated costs with the intent of the law. To deny a study abroad option to a student who is deaf or hard of hearing based on their disability may put the university at legal risk. However, OCR [Arizona State University \(OCR 2001\)](#) stated that "neither the ADA nor Section 504 prohibit discrimination on the basis of disability in overseas programs." Upon reviewing the information provided by the complainant and the University, as well as current OCR policy information, and available case law, it is OCR's determination that Section 504 and Title II protections do not extend extraterritorially. In other words, it is OCR's position that neither Section 504 nor Title II requires a college to provide auxiliary aids and services in overseas

programs. Nor does either statute otherwise prohibit discrimination on the basis of disability in overseas programs. A couple of useful resources for study abroad are [Study Abroad and Students with Disabilities: Making it Work at Community Colleges](#) produced by Mobility International USA, and "[Arranging for Sign Language Interpretation Abroad: A Disability Service Provider Perspective.](#)" and "Attitudes of College Students Toward Study Abroad: Implications for Disability Service Providers." Keen, K. Institute of International Education Network Column: Widening the Circle. 2003.

In the case of study at sea, if the college owns the boat or the class is offered on a military base abroad, the college must provide accommodations.