



## Accommodating Faculty Members Who Have Disabilities

*The report that follows is excerpted from a longer report of the same title, which was prepared by a subcommittee of Committee A on Academic Freedom and Tenure. In November 2011, Committee A approved the report for publication.*

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### Introduction

In recent years the rights and responsibilities of students who have disabilities have received considerable attention. Professors routinely accommodate students with a front-row seat in class or extended time on an examination. Faculty members who have disabilities have received far less attention. This report from a subcommittee of Committee A on Academic Freedom and Tenure addresses practical and legal issues concerning faculty members who have disabilities.<sup>1</sup>

In higher education, as in American society generally, one still often encounters the stereotype that disability necessarily equates with diminished professional competence. With suitable accommodations, a faculty member who has a physical or mental disability may perform equally well as, or even better than, a colleague who does not have a disability. As an expert on these issues observed in 2009, “So far, professional groups have not fully incorporated disability in their diversity agendas.”<sup>2</sup> In promoting access and success for faculty members with disabilities, the AAUP highlights the significant talents of an important group, promotes a diverse professoriate, and expands role models for students.

A faculty member may have a disabling condition at the time of his or her appointment or may develop a disability later. The onset can be rapid or gradual. A disability may be a physical or mental condition, and a faculty member may have multiple disabilities. Comprehensive data are not readily available on the incidence of disability among the American professoriate.<sup>3</sup>

Federal, state, and local laws establish basic requirements for the protection of faculty members who have disabilities. Federal laws include the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. While this report incorporates some core legal principles and expands upon them for the academic setting, it is not a substitute for legal advice tailored to particular situations.

### Steps in Accommodation

Most institutions have well-developed procedures for managing the needs of students who have disabilities.<sup>4</sup> Procedures for managing faculty accommodation requests, while used less frequently, are equally important.

*Raising the Issue of Disability.* If a faculty member believes that a disabling condition impedes his or her discharge of professional responsibilities, it is incumbent on the individual to bring the matter to the attention of appropriate institutional authorities. Someone who has an obvious disability, such as blindness or a missing limb, need not provide notice. Unless a disability is obvious, the institution must not initiate discussion with an individual about a potential disability. This is a fundamental requirement—that the faculty member alone has the right and responsibility to raise the issue of disability.

Once a faculty member indicates, whether orally or in writing, that he or she has a disability, a structured process involving several steps begins. If it has not already done so, the institution must identify the “essential functions” of the faculty member’s position. The nature and extent of the disability may be examined. Most importantly, the individual and institution must engage in good-faith discussions about how best to accommodate the limiting conditions. The following sections address the steps in accommodation.

Throughout the process, institutional authorities must respect the individual’s privacy interests and confine information about the matter to those with professional responsibility for addressing or resolving it. Under federal law, information about a disability must not be included in the faculty member’s regular personnel file. This separation limits the possibility that the information might improperly and negatively influence decisions regarding the individual.

A search committee should only raise disability when asking all candidates whether they may need an accommodation in the application or interview process. If the candidate does need accommodation, the institution should be thorough and gracious. The Modern Language

Association has prepared advice on interviewing candidates with disabilities.<sup>5</sup>

*Defining Essential Functions.* A faculty member who has a disability needs to accomplish the essential functions of his or her position, either with or without an accommodation. Essential elements common to all faculty positions would be requirements such as

- mental agility, including capacity for analysis and evaluation;
- mastery of a complex subject;
- initiative;
- creativity;
- strong communication skills;
- ability to work cooperatively with others; and
- ethical behavior.

If an institution has a standard teaching load, fulfilling the load could be an essential function. Research and service expectations may also be essential functions at many institutions.

Beyond essential functions common to all faculty appointments, a particular position may have its own requirements. The demands of an academic position that involves performing on violin with the music department's faculty string quartet differ from those of a position in theoretical mathematics. Apart from obvious differences in subject matter, the violinist needs the capacity to play in public quartet performances.<sup>6</sup> The mathematician, in contrast, might require sophistication in highly specialized computer functions. The hours each devotes to working directly with students would likely differ. Such variations shape the essential functions of particular faculty positions.

At what point should a university define the essential functions of its faculty positions? Some institutions define essential functions for the purpose of, and in the process of, posting and eventually filling open positions. Such institutions routinely include the essential functions in the vacancy announcements, typically listed as "required qualifications." Other institutions have proceeded more comprehensively, establishing essential functions for all faculty positions. But some colleges and universities, perhaps most, have not undertaken to define the essential functions of their faculty positions. We encourage appropriate faculty bodies, including departments and faculty governing bodies, to define the essential functions of faculty positions, subject to review by administrative authorities.

Articulating essential functions provides a useful framework for professional responsibility and reduces for all faculty members the prospect of arbitrary charges of neglect of duties or incompetence.

Nonessential functions are those that may be absorbed by other people. Leading student field trips may, for example, be an essential function for a geology professor. Driving the van, however, may be a nonessential function that someone else could perform. Nonessential functions are also called marginal functions.

A position's essential functions provide the starting point for considering a faculty member's request for accommodation on the basis of a disability. Briefly stated, an individual who has a disability must perform the essential functions, either with or without an accommodation. If a faculty member requests an accommodation and the institution has not previously defined his or her essential functions, the institution must promptly perform the analysis. The analysis at this point is only of the position— what are its core responsibilities, without regard to the individual situation prompting the analysis. That is, the essential functions of a position are independent of any individual who may hold it.

If an institution has defined essential functions of faculty positions before a professor requests an accommodation, the institution avoids possible charges that it manipulated the analysis to the detriment of the individual. Written position descriptions and detailed vacancy announcements provide evidence of essential functions. Faculty members should lead the effort to create fair descriptions of essential functions of faculty positions

*Establishing the Nature and Extent of the Disability.* An individual who has a disability may first raise the issue in a request for leave for medical treatment or rehabilitation. Unless a disability and the limitations it creates are obvious, the institution may need information about the nature and extent of the disability. The goal is an objective analysis of the individual's condition and capacity to fulfill the position's essential functions.

The faculty member typically seeks documentation from his or her own health-care provider or other appropriate professional.<sup>7</sup> The institution may write to the professional to share a description of the essential functions of the individual's position. The institution might solicit from the professional specific information, such as the diagnosis, the expected duration of and prognosis for the disabling condition, the individual's general limitations and specific capacity to perform the essential functions, and suggestions for possible accommodations.

The institution may have an appropriate professional of its choice review the documentation. If after review the institution requires additional information, it may seek further guidance and clarification from the professional who provided the original documentation for the faculty member. In unusual situations, central issues may remain unresolved even after further exchange with this professional. The institution may take the final step of arranging for a healthcare provider or other appropriate professional of its choice to evaluate the faculty member's capacity to fulfill the position's essential responsibilities. The faculty member should not bear any expense for an evaluation by a health-care provider or other appropriate professional selected by the institution.

It is useful to bear in mind that the term disability has a technical, legal meaning. It does not cover all limiting conditions.<sup>8</sup> A bad cold and a broken leg are not disabilities because they are transitory and typically last fewer than six months. A disability is a long-term physical or mental impairment that significantly impedes an individual in performing an activity that is of central importance to life.<sup>9</sup> Central activities include sleeping and eating, for example, and also bodily processes such as function of the immune system and normal cell growth. A disability may be continuous, episodic, or intermittent. Intermittent disability would include cancer in remission, if when active the disease would be an impairment. The statute, regulations, and case law all elaborate on the definition.

The Americans with Disabilities Act protects a person *without* a disability if the employer treats him or her as impaired. This is informally known as the statute's "regarded as" clause. Caution requires that we avoid making comments suggesting that faculty members or others have a mental or physical problem.

*Discussing Accommodation.* Once a faculty member has raised a disability issue, the essential functions of the position have been identified, and the nature and extent of the disabling condition have been established, the process of discussing and structuring accommodations begins. Federal law mandates an interactive process. The faculty member and the department are typically well informed about possible adjustments that would permit the individual to succeed in meeting the essential functions. Experts from a campus disability-support office or human resources often provide valuable assistance. They may have considerable experience in translating diagnoses into pragmatic considerations and suggesting accommodations.

An experimental scientist with a disabling back condition might need higher laboratory countertops. A professor who loses his eyesight might need a reader and a specially equipped computer. The options are nearly infinite, and a reasonable solution should be selected to fit the circumstances. The essence of the interactive process is that each party solicits and considers the other's suggestions. The solution must be effective and reasonable, and the institution must be prepared to defray reasonable expenses.<sup>10</sup>

Sometimes persons who have disabilities privately and quietly bear the burden of making their own accommodations. They should, however, be encouraged to avail themselves of the institution's resources, to which they have a legal right.

Some accommodation requests may be inherently unreasonable. These might include, for example,

- demand for the creation of a part-time position with a full-time salary,
- refusal to serve on committees with specific individuals,
- removal of the department chair,
- refusal to teach undergraduates, or
- refusal to participate in department meetings.

Even some of these requests, though, should be evaluated in the context of the position's essential functions. If travel to campus for meetings is problematic, perhaps a faculty member could participate remotely. If attendance at department meetings is not an essential function, then an individual might be excused entirely.

The US Department of Labor sponsors the Job Accommodation Network, which provides online resources and telephone advice on workplace accommodations.<sup>11</sup> Structuring reasonable accommodations calls for creativity, flexibility, and open dialogue. A successful accommodation redounds to the mutual benefit of the institution and the faculty member.

*Addressing Evaluation and Performance Issues.* In past decades, the first female or minority professor in a department may not have received effective mentoring and evaluations.<sup>12</sup> Faculty members who have disabilities should not suffer the same fate. They should be evaluated on the same schedule and basis as their colleagues who are not disabled.<sup>13</sup> Those responsible for the evaluation should take care to be candid and to avoid paternalism. Evaluators should not assume a faculty member's disability is the cause of any performance problems. Like any other faculty member, a faculty member who has a disability may fail to fulfill professional responsibilities. The basis for discipline or dismissal must be the individual's performance. Institutions must avoid speculating on medical causes for performance problems. If a faculty member appears to be exhibiting mild dementia, for example, the evaluation should address the problematic behavior and its consequences. Such an evaluation might appropriately state: "You did not meet your class three times last semester and

did not provide an explanation. Students report that your lectures are disorganized. You failed to turn in grades by the deadline. These problems harm current students and impede the department's efforts to attract more students to the major.”

While some might criticize such an approach as insensitive, it focuses on performance and addresses core institutional concerns. Were the evaluation to suggest, for example, that “some early- stage dementia may be contributing to your problems,” it could constitute disability discrimination. Were the evaluation to urge the individual to consider retirement, it would likely run afoul of age discrimination laws.

To protect the dignity of faculty members unable to fulfill their professional responsibilities, institutions are well advised to seek negotiated resolutions.<sup>14</sup> Failing a mutually satisfactory resolution, in serious cases the institution should proceed under Regulation 5 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.<sup>15</sup>

A faculty member who has a disability is entitled to the same due- process protections as a faculty member who does not have a disability. Equity requires use of the standard criteria and procedures. In special circumstances, however, an institution might wish to offer an abbreviated process on a voluntary basis. This could be appropriate if, for example, the subject matter of the proceeding were of a highly sensitive personal nature. An abbreviated process might involve a representative standing in for the individual or mutually agreed- upon stipulations of facts about the faculty member's performance. The choice between the full process and an abbreviated one must be left entirely to the individual.

Conceivably, a faculty member facing dismissal might for the first time indicate that he or she has a disability and might request an accommodation. In its discretion, the institution may proceed as discussed above, obtaining an objective opinion from the individual's health- care provider or other appropriate professional about the nature and extent of the disability. The information may form the basis for discussion of accommodations that would allow the faculty member better to fulfill his or her professional responsibilities, thus postponing or eliminating the need for dismissal proceedings. But an institution bears no legal obligation to accommodate retroactively a disability of which it was unaware. The faculty member who first raises a disability issue during a dismissal proceeding may be entitled to a reasonable accommodation in order to participate effectively in the proceeding itself.<sup>16</sup>

An institution must avoid requiring psychological counseling or medical treatment as a condition for a faculty member with a disability to retain his or her position. Mandatory counseling or treatment is inconsistent with using performance as the sole basis for judging professional fitness.

## Conclusion

A final cautionary note is in order. It is important to avoid casual use of words such as “disabled” or “handicapped” unless circumstances warrant the technical application of such terms. Similarly, the speculative or pejorative labeling of an individual as having a mental or physical challenge perpetuates negative stereotypes and may even create a presumption that the speaker regards the individual as having a disability.

The academy welcomes and supports qualified faculty members with disabilities, who deserve the same opportunities and protections as their colleagues who are not disabled.

## Notes

1. The subcommittee's original task was to review Regulation 4(e) of the AAUP's “Recommended Institutional Regulations on Academic Freedom and Tenure,” “Termination Because of Physical or Mental Disability,” which, on the advice of the subcommittee, Committee A then withdrew, inviting further comment. The language of the withdrawn regulation can be found in *Academe* 93 (March– April 2007): 124–25. [Back to text](#)
2. Carrie G. Basas, “Lawyers with Disabilities Add Critical Diversity to the Profession,” in John W. Parry and Williams J. Phelan IV (eds.), *The Second National Conference on the Employment of Lawyers with Disabilities: A Report from the American Bar Association for the Legal Profession* (Washington, DC: American Bar Association, 2009), 26– 29. [Back to text](#)
3. The National Science Foundation (NSF) tracks the careers of persons with disabilities who hold doctorates in the sciences and engineering. The NSF reported that, in 2008, 7.3 percent had a disability ([http:// www.nsf .gov/statistics /wmpd/](http://www.nsf.gov/statistics/wmpd/)). As to the general lack of data, regulations limit the kinds of queries employers may make of applicants regarding disability. [Back to text](#)
4. The many ways in which faculty members can support students who have disabilities are beyond the scope of this report. We simply note the option of including a syllabus statement such as: “My goal is to make this course accessible to all students. If you think you need an accommodation for a disability, please let [the appropriate party— for example, ‘me,’ ‘the disability services office,’ or ‘the associate

dean'] know at your earliest convenience. Some aspects of this course— the assignments, the in- class activities, and the way I teach— may be modified to facilitate your participation and progress. The sooner you make [the appropriate party] aware of your needs, the sooner we can determine appropriate accommodations. I will treat any information you provide about your disability or accommodations with respect.” [Back to text](#)

5. MLA Committee on Disability *Issues in the Profession, Disability and Hiring: Guidelines for Departmental Search Committees* (New York: Modern Language Association, September 2006), [http://www.mla.org/dis\\_hiring\\_guidelines](http://www.mla.org/dis_hiring_guidelines). [Back to text](#)

6. If a violin pedagogue, not involved in the faculty string quartet, lost the use of her hands, her teaching career would not necessarily come to an end. Some professors teach instrumental music orally to avoid having their sound and interpretation unduly influence their students. Alternatively, an assistant might demonstrate on the violin during lessons. The issue is whether the faculty member can perform the essential functions of her position in violin instruction, either with or without an accommodation. [Back to text](#)

7. Consider the situation of a faculty member who has attention deficit disorder or attention deficit hyperactivity disorder. She may furnish documentation about her condition from an expert in learning disabilities, although the expert may not be a “healthcare provider” as that phrase is commonly understood. [Back to text](#)

8. Questions often arise on the legal status of alcohol abuse and illegal drug use. Federal law covers past or current alcoholism as a disability. Illegal drug use is not a covered disability. Federal law, however, protects individuals undergoing treatment for drug addiction. An institution may prohibit faculty and staff from consuming or possessing alcohol or illegal drugs on campus. It may also prohibit faculty and staff from arriving at work impaired by alcohol or illegal drugs. See, for example, the Drug- Free Schools and Communities Act of 1989, 20 US Code §1011(l). [Back to text](#)

9. Here is the statutory definition. Definition of disability (42 US Code §12102):

As used in this chapter:

(1) Disability. The term ‘disability’ means, with respect to an individual

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major Life Activities

(A) In general. For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions. For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment. For purposes of paragraph (1)(C):

(A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less. [Back to text](#)

10. As Appendix C of the full report discusses, feasibility, cost, and effect of program adjustments are related factors. The institution must reach a reasonable, justifiable conclusion in balancing competing considerations. [Back to text](#)

11. See <http://askjan.org> . [Back to text](#)

12. See, for example, *Kunda v. Muhlenberg College*, 621 F.2d 532 (3d Cir. 1980), a case involving a female faculty member who was not advised about a requirement of an advanced degree. [Back to text](#)

13. For sound faculty evaluation guidelines, see *Good Practice in Tenure Evaluation: Advice for Faculty, Department Chairs, and Academic Administrators* (Washington, DC: American Council on Education, American Association of University Professors, and United Educators Insurance, 2000). [Back to text](#)

14. In severe situations, an institution may require a faculty member to undergo a fitness- for- duty medical evaluation. The healthcare provider performing the evaluation should receive information about the essential functions of the individual's position. Merely requiring such an evaluation does not, as a matter of federal law, constitute discrimination on the basis of disability. State laws may also bear on such examinations. [Back to text](#)

15. AAUP, *Policy Documents and Reports*, 11th ed. (Baltimore: Johns Hopkins University Press, 2015),83-84. [Back to text](#)

16. Students facing disciplinary procedures sometimes raise an issue of disability for the first time during the discipline process. Should the same pattern occur for a faculty member facing dismissal or other severe sanction, the institution might examine how it has handled comparable student disability accommodation requests. [Back to text](#)

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