

ADA 504 Policy and Procedures

POLICY

It is the policy of the College of Health Care Professions (CHCP) to prohibit discrimination on the basis disability regarding the administration of all campus programs, services and activities including and the admission of students, employment actions, or other sponsored activities. Section 504 is a civil rights law. The purpose of Section 504 is to protect individuals with disabilities from discrimination for reasons related to their disabilities.

Section 504 of the Rehabilitation Act at 29 U. S. C:

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 (Rehabilitation Act) that affects the meaning of disability in Section 504. The standards adopted by the ADA were designed not to restrict the rights or remedies available under Section 504.

Section 504 prohibits discrimination based on disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education. Title II prohibits discrimination on the basis of disability by state and local governments. The Office of Special Education and Rehabilitative Services (OSERS), also a component of the U.S. Department of Education, administers the Individuals with Disabilities Education Act (IDEA), a statute which funds special education programs. Each state educational agency is responsible for administering IDEA within the state and distributing the funds for special education programs. IDEA is a grant statute and attaches many specific conditions to the receipt of Federal IDEA funds. Section 504 and the ADA are antidiscrimination laws and do not provide any type of funding.

STUDENTS PROTECTED UNDER SECTION 504

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment.

DETERMINATION OF PHYSICAL OR MENTAL IMPAIRMENT

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made based on an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as disclosed on the Definition section, below.

PURPOSE

All campuses of CHCP seek to foster a collegial atmosphere in which students are nurtured and educated through close faculty-student relationships, student camaraderie, and individualized attention. Discrimination of any kind is prohibited. CHCP seeks or intends to resolve complaints of identified discrimination in a timely, effective, and fair manner which respects the rights of all parties involved to the maximum extent possible. CHCP will also take reasonably necessary action (including, for example, appropriate accommodations) to ensure instances of discrimination do not recur.

CHCP will provide students with reasonably appropriate academic adjustments and auxiliary aids and services that are reasonably necessary to afford an individual with a disability an equal opportunity to participate in a school's program.

CHCP is not required to make adjustments or provide aids or services that would result in a fundamental alteration of a recipient's program or impose an undue burden.

REPORTING DISCRIMINATION BASED ON DISABILITY

If you believe you have been harassed or discriminated against (or have been a bystander or witness to an instance of perceived harassment or discrimination), CHCP encourages you to promptly contact your campus President and/or its designated ADA 504 Coordinator, Thoma Brewer, by

Telephone: (832) 833-9041 or email: ADA504Coordinator@chcp.edu.

When CHCP receives notice of or a complaint regarding any disability-based discrimination, it will take prompt corrective action reasonably calculated to stop and or prevent its recurrence, and as appropriate, remedy its effects. This may or will include conducting an appropriate investigation.

DEFINITIONS

Physical or Mental Impairment. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Major Life Activity. Major life activity is defined at 34 C.F.R. 104.3(j)(2)(ii) to include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Other functions can be major life activities for purposes of Section 504.

ADA 504 Coordinator. CHCP's ADA 504 Coordinator or their designee is trained and knowledgeable about enforcement, compliance, communication, and implementation of CHCP's anti-harassment and anti-discrimination policy.

The ADA 504 Coordinator's contact information is as follows:

Thoma Brewer, CHCP College

Phone: (832) 833-9041

Email: ADA504Coordinator@chcp.edu

CONFIDENTIALITY

CHCP has independent obligations to report or investigate potential discrimination of any kind, even if a complainant does not wish to initiate an official process. Therefore, absolute confidentiality cannot be promised with respect to a complaint of discrimination.

PROCEDURES & IMPLEMENTATION

Duty to Report Violations. Any member of the CHCP community including students, faculty, employees, and third-parties have a duty to report violations of this policy when individuals become aware of accusations or actions violating CHCP Nondiscriminatory Policies. Any such individual should promptly notify the CHCP's ADA 504 Coordinator of any violations.

Formal Complaint, Investigation, and Resolution Process

Complaint Process

Complaints concerning discrimination based on disability should be in writing and provided to the ADA 504 Coordinator (or verbally communicated to him/her). Complaints may be submitted to **Thoma Brewer via email (ADA504Coordinator@chcp.edu), telephone (832) 333-9041**, or in person.

Complaints should be filed as soon as possible after the alleged misconduct. Time delay can have a negative effect on the CHCP's ability to conduct an effective investigation. Written complaints are preferable because they reduce the likelihood of a miscommunication or other ambiguities. Initial verbal complaints may be sufficient in extraordinary circumstances.

To be considered timely, a complaint, which must be submitted within (30) days or, (b) the end of the semester in which the alleged discriminatory action occurred. A complaint should include the following information:

- a) Complainant's full name, home address, email, telephone number, and CHCP Student/Employee ID number.
- b) Name of the person against whom the complaint was made, including job title or student status, if known.
- c) The protected status that is the basis for the alleged disability-based discrimination.
- d) A clear statement of the facts that constitute the alleged disability-based discrimination.
- e) Complainant should include the term and year of his/her most recent active employment, academic, or student status with the College.
- f) A student who is seeking admission to CHCP should include the term and year in which he/she sought admission to the college.
- g) The full name, address, and telephone number of complainant's advisor or supervisor, if any.
- h) The specific harm that resulted from the alleged act and the remedy sought.
- i) The complainant's signature and the date on which the complaint was submitted.

While prompt reporting is expected, complaints older than 30 days will be processed. However, if more than 365 days have elapsed since the day of the complaint, the complaint may not be processed. Every effort is made to conduct a thorough and timely investigation. Several factors may impact CHCP's ability to conduct a prompt investigation, including, but not limited to, the Complainant's accessibility and responsiveness, witness availability and responsiveness, the number of witnesses, the timing of the investigation (e.g., if an investigation is being conducted at a time when students are taking final exams or on recess).

Complaints about Students, Faculty, Other Employees or Third Parties

Upon receipt of a complaint, the ADA 504 Coordinator or their designee, shall investigate the circumstances of the complaint. The investigation will include documented interviews of the Complainant, Campus leadership, other relevant persons, and a review of program scope.

The ADA 504 Coordinator shall have thirty (30) days from the intake interview to complete the investigation of the event in question. This period may be extended if one or more of the following occurs:

- Availability or unavailability of a witness or relevant/material documents;
- Recalcitrant or reluctant witness and/or any necessary party;
- Delay or other uncooperative actions of any necessary party;
- Number of witnesses;
- Holiday and vacation periods; or
- Any other unforeseeable event/circumstance which impacts the investigation.

An investigation should take less than 60 calendar days following receipt of the complaint. This may not be practicable in every investigation and may vary depending on the complexity of the investigation and the severity and extent of the alleged misconduct or offense. The ADA 504 Coordinator shall report the findings of the investigation to a designated, impartial Fact Finder. The Fact Finder shall endeavor to issue a determination within fifteen days of receiving the investigation file to determine and detail: (a) whether there is probable cause to believe an offense or misconduct (including, though not necessarily limited to a violation of CHCP policy) occurred with respect to each allegation of discrimination based on disability, (b) a description of actions taken, if any, to prevent similar problems from occurring in the future, and (c) the proposed resolution of the complaint.

Intake Interview

After receipt of a complaint, the ADA 504 Coordinator or their designee will meet with the Complainant as soon as possible, usually within one week, but not later than thirty (30) days after receipt. The Complainant must make himself/herself available to meet.

The meeting will be an intake interview in which the ADA 504 Coordinator or their designee will inform the Complainant about the investigation procedure and timeline. The Complainant may sign a formal complaint form at that time (under the above guidelines) if he/she has not already done so. A complaint will proceed even in the absence of a signed written complaint.

Duty to Cooperate and Facilitate. All members of the CHCP community are required to cooperate fully with any investigation about unlawful discrimination. A faculty member, staff member, or student who has relevant information but

refuses to cooperate with an ongoing investigation may be subject to disciplinary action, and for employees that includes termination of employment.

Preponderance of the Evidence

In making his/her determination, the Fact Finder shall observe a preponderance of the evidence standard. This means reaching a conclusion based upon all available facts and information as to whether one party's evidence outweighs the evidence of the other. This standard is not the more stringent standard a court may use in considering criminal responsibility.

Notice of Determination and Further Action

Both the Complainant (i.e., the individual who filed the complaint of discrimination based on disability or the alleged target) and the Respondent (i.e., the alleged perpetrator of the misconduct or offense), shall be informed of the Fact Finder's decision within ten (10) days of the Fact Finder issuing a determination. Please refer to policies regarding the confidentiality of this determination.

Upon issuance of the notice of determination to the Complainant and Respondent, each will be informed of any actions or precautions, including, for example, any reasonable accommodations, that will be taken in response to the Fact Finder's determination. Questions concerning these further actions should be addressed to the ADA 504 Coordinator.

EXTERNAL REPORTING

Members of the CHCP community are always subject to local, state, and federal laws, and nothing in these procedures is intended to limit or postpone the right of an individual to file a complaint or charge with appropriate federal, state, or local departments or agencies.

Among other options, students may contact the Office for Civil Rights of the U.S. Department of Education for inquiries concerning the application of ADA 504 as well as the implementation of its regulations. The Office for Civil Rights can be contacted using the following information:

U.S. Department of Education
Office for Civil Rights
32 Old Slip, 26th Floor
New York, New York 10005
Phone (646) 428-3800
Fax (646) 428-3843
email: OCR.NewYork@ed.gov