

**\*\*\*DRAFT - NOT FOR FILING\*\*\*****4112-5-09 Discrimination against the disabled in institutions of higher education.**

- (A) Applicability. This rule applies to post-secondary education programs and activities, including post-secondary vocational educational programs and activities as defined in section 4112.022 of the Revised Code.
- (B) Admissions and recruitment.
- (1) Generally. Qualified disabled persons shall not be denied admission or be subjected to discrimination in admission or recruitment on the basis of disability at an educational institution covered by Chapter 4112. of the Revised Code.
- (2) Admissions. In administering its admission policies, an educational institution:
- (a) May not apply limitations upon the number or proportion of disabled persons who may be admitted;
  - (b) May not make use of any test or criterion for admission that has a disproportionate adverse effect on disabled persons or any class of disabled persons unless:
    - (i) The test or criterion, as used by the educational institution, has been validated as a predictor of success in the education program or activity in question; and
    - (ii) Alternate tests or criteria that have a less disproportionate adverse effect are shown not to be available.
  - (c) Shall assure itself that:
    - (i) Admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);
    - (ii) Admissions tests that are designed for persons with impaired sensory, manual or speaking skills are offered as often and in as timely a manner as are other admissions tests; and
    - (iii) Admissions tests are administered in facilities that, on the whole, are accessible to disabled persons; and
  - (d) Except as provided in paragraph (C) of this rule, may not make preadmission inquiry as to whether an applicant for admission is a disabled person but, after admission, may make inquiries on a confidential basis as to disabilities that may require accommodation.
- (3) Preadmission inquiry exception. When an educational institution is taking remedial action to correct the effects of past discrimination or when an educational institution is taking voluntary affirmative action to remedy conditions that have resulted in limited participation by qualified disabled persons, the educational institution may invite applicants for admission to indicate whether and to what extent they are disabled, provided that:
- (a) The educational institution states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary affirmative action efforts;

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and

(b) The educational institution states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this rule.

(4) Validity studies. For the purpose of paragraph (B)(2)(b) of this rule, an educational institution may base prediction equations on first-year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

## (C) Treatment of students.

(1) No qualified disabled student shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other post-secondary education program or activity to which this rule applies.

(2) Any educational institution to which this rule applies that considers participation by students in education programs or activities not operated wholly by the educational institution as part of, or equivalent to, an education program or activity operated by the educational institution shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified disabled persons.

(3) An educational institution may not, on the basis of disability, exclude any qualified disabled student from any course, course of study, or other part of its education program or activity.

(4) Educational institutions shall operate their programs and activities in the most integrated setting appropriate.

## (D) Academic adjustments.

(1) Academic requirements. Educational institutions shall make ~~such~~ modifications to its academic requirements as are necessary to ensure that ~~such~~ requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified disabled applicant or student. Academic requirements that the educational institution can demonstrate are essential to the program of instruction being pursued by ~~such~~ a student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this rule. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(2) Other rules. Educational institutions may not impose upon disabled students other rules, such as the prohibition of tape recorders in classrooms or ~~of dog guides~~ animal assistants in campus buildings, that have the effect of limiting the participation of disabled students in the educational institution's education program or activity.

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(3) Course examinations. In its course examinations or other procedures for evaluating students' academic achievement in its program, educational institutions shall provide ~~such~~ methods for evaluating the achievement of students who have a disability that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where ~~such~~ these skills are the factors that the test purports to measure).

(4) Auxiliary aids.

(a) Educational institutions shall take ~~such~~ steps as are necessary to ensure that no disabled student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the educational institution because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(b) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Educational institutions need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

(E) Housing.

(1) Housing provided by the educational institution. Any educational institution that provides housing to its non-disabled students shall provide comparable, convenient, and accessible housing to disabled students at the same cost as to others. ~~Such housing~~ Housing shall be available in sufficient quantity and variety so that the scope of disabled students' choice of living accommodations is, as a whole, comparable to that of non-disabled students.

(2) Other housing. An educational institution that assists any agency, organization, or person in making housing available to any of its students shall take ~~such~~ action as may be necessary to assure itself that ~~such~~ housing is, as a whole, made available in a manner that does not result in discrimination on the basis of disability.

(F) Financial and employment assistance to students.

(1) Provision of financial assistance.

(a) In providing financial assistance to qualified disabled persons, an educational institution may not:

(i) On the basis of disability, provide less assistance than is provided to non-disabled persons, limit eligibility for assistance, or otherwise discriminate; or

(ii) Assist any entity or person that provides assistance to any of the educational institution's students in a manner that discriminates against qualified disabled persons on the basis of disability.

(b) An educational institution may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal

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instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of disability only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of disability.

(2) Assistance in making available outside employment. An educational institution that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that ~~such~~ employment opportunities, as a whole, are made available in a manner that would not violate paragraph (F)(1)(a) of this rule if they were provided by the educational institution.

(3) Employment of students. An educational institution that employs any of its students may not do so in a manner that violates paragraph (F)(1)(a) of this rule.

(G) Nonacademic services.

(1) Physical education and athletics.

(a) In providing physical education courses and athletics and similar programs and activities to any of its students, educational institutions may not discriminate on the basis of disability. An educational institution that offers physical education courses or that operates or sponsors intercollegiate, club or intramural athletics shall provide to qualified disabled students an equal opportunity for participation in these activities.

(b) An educational institution may offer to disabled students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of section 4112.022 of the Revised Code, and only if no qualified disabled student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(2) Counseling and placement services. An educational institution that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of disability. The educational institution shall ensure that qualified disabled students are not counseled toward more restrictive career objectives than are non-disabled students with similar interests and abilities. This requirement does not preclude an educational institution from providing factual information about licensing and certification requirements that may present obstacles to disabled persons in their pursuit of particular careers.

(3) Social organizations. An educational institution that provides significant assistance to fraternities, sororities, or similar organizations, including the use of services and facilities for social functions, shall assure itself that the membership practices of ~~such~~ organizations do not permit discrimination otherwise prohibited by this rule.

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Certification

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Date

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