

Health Related Accommodations Students with Disabilities

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Overview

- Disabilities laws are very broadly construed and cover many people
- Law gives you flexibility to offer something other than what the student requests
- Legal obligation is to remove barriers to access, not make the student “better”
- Best protection against a challenge is engaging in interactive process and basing decisions on qualified professional judgment



Relevant Laws

- Rehabilitation Act of 1974 (Section 504)
- Americans With Disabilities Act (ADA)
- U.S. Fair Housing Act
- NYS Human Rights Law



Enforcement

- US Dept of Ed Office for Civil Rights (OCR) (Section 504)
- Department of Justice (ADA)
- New York State Division of Human Rights (NYSHRL)
- US Fair Housing Administration (FHA)
- Private Lawsuits (all of the above)



Who is Disabled?

- A person with (1) a physical/mental impairment that (2) substantially limits (3) a major life activity
- “substantially limits” means materially restricts
- Major life activities include learning, eating, sleeping, walking, thinking and concentrating
- Also bodily functions (e.g. digestive, reproductive, immune, respiratory)



Documentation of Disability

- School is entitled to documentation that is
 - Reasonably current
 - Provided by a *qualified* medical provider
 - Somewhat specific about how the impairment affects the patient/student and what accommodations may help
- School may be entitled to independent assessment at school expense
- Mental disability claims are trickiest



Individualized determinations

- Almost no diagnosis is a per se disability
- Analyze each case individually
- Always ask how the impairment substantially affects *this person's* major life activities
- Beware: mitigation measures (meds, coping mechanisms) no longer count



Obligations to the Disabled

- Reasonable Accommodations
 - Anything that may improve student's access by ameliorating disability effects
 - May include meal plan changes, room changes or release from housing
 - Must not cause "undue hardship"
 - More than inconvenience or expense
 - Does not fundamentally alter nature of the academic program, services, facilities
 - Does not include personal devices or services (e.g. aides, wheelchairs)
- Student need not get first choice as long as accommodation is reasonable
- Obligation is not to make the student "better"



Evaluating Requests

- Review medical documentation regarding student's impairment
 - Is it from qualified provider and reasonably current?
- Focus on appropriateness of the accommodation requested
 - Is it reasonably related to the impairment?
 - Would other accommodations be as effective?



Interactive Process

- Individualized assessment is key
- Interactive process is always preferable
- Never just say “no.”
- Document the process and conclusion, giving reasons
- Always best to rely on professional judgment vs. speculation



Keep in Mind

- Cost of proving you are right may outweigh the benefit
- Litigation is expensive
- Consult your legal counsel if you have doubts



Case Study

- Undergraduate with severe depression wants to bring dog to campus
- Doctor's note says: “she has depression that interferes with her ability to perform activities of daily living”
- Note says dog will help her by making her attend to his needs
- Must you waive “no pets” policy as a reasonable accommodation?



Evaluating & Responding to Student Requests for Health- Related Accommodations

Rick Crummins, Esq

Michelle Livingston

Ralph Manchester, MD

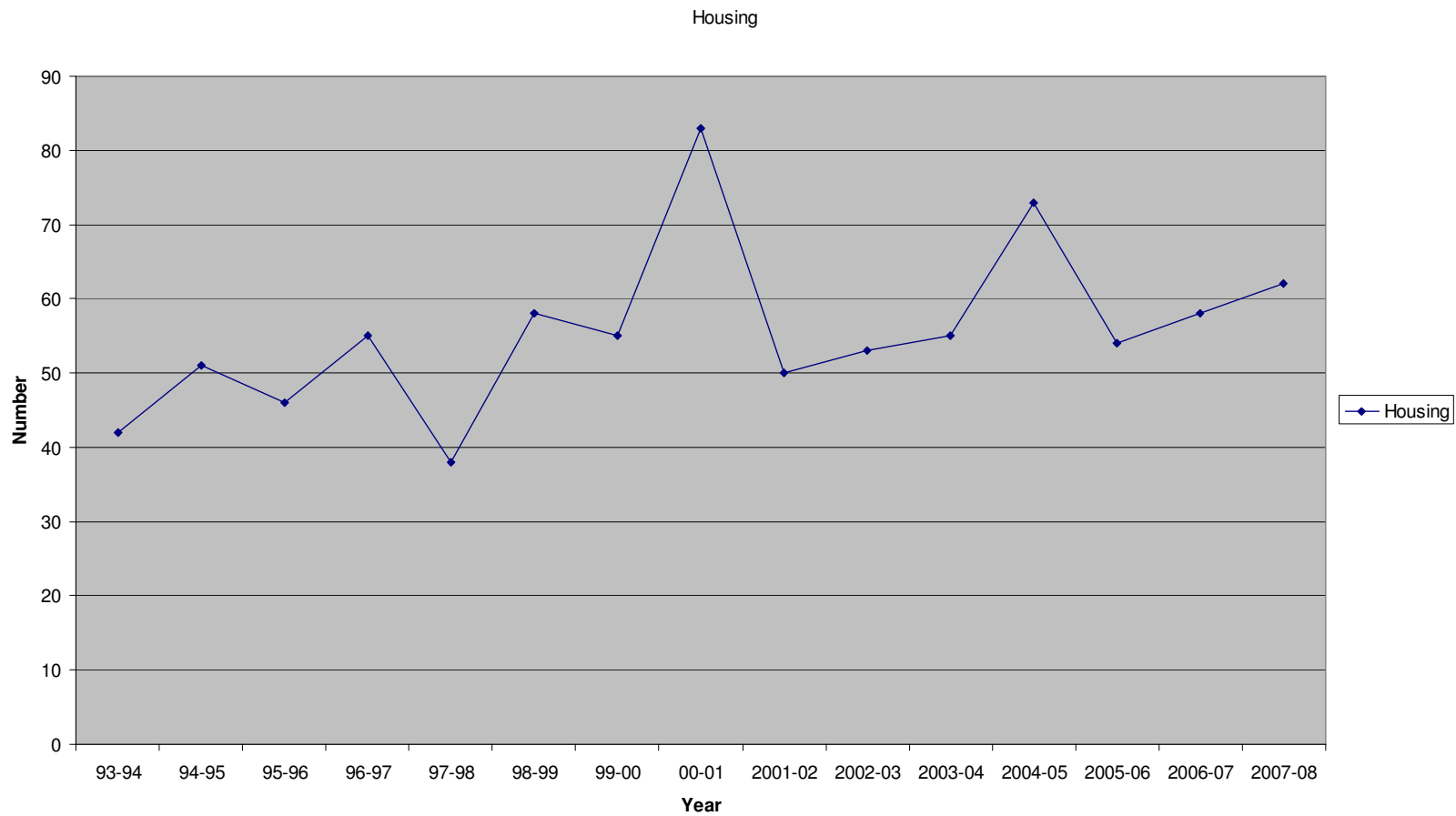
Overview

- The pattern of requests
- The medical perspective
- The legal/regulatory perspective
- The logistics perspective
- Discussion - What's the best model for handling these requests?

The Pattern of Requests

- For 2007-08 academic year at UR:
 - Academic
 - 32 medical inactive (31 supported)
 - 44 return from med inactive (42 supported)
 - 5 FT to PT (5 supported)
 - Lifestyle
 - 62 housing requests (20 supported)
 - 20 meal plan requests (1 supported)
 - 163 total (we don't do Parking any more)

The Pattern of Requests



The Pattern of Requests

- Housing Requests
 - 24 single room requests
 - 17 requests to be released from contract
 - 6 requests to be near classes
 - 4 requests for a longer mattress
 - 1 each for access to kitchen, permission to keep “service dog” in room, a “cleaner room”, live with “special needs” roommate

The Pattern of Requests

- Diagnoses behind supported housing requests
 - Chronic back pain (3)
 - Inflammatory bowel disease (3)
 - Asthma/allergies (3)
 - Mental health problem (2)
 - Migraine (2)
 - Other musculoskeletal (2)
 - One each: DM, CML, epilepsy, dermatomyositis

The Pattern of Requests

- Housing request not supported but other recommendations made
 - Standard dust mite allergy control
 - No carpets, drapes or upholstered furniture; pillow and mattress enclosed in airtight case; air purifier
 - Room on quiet floor
 - Extra long mattress
 - Room near bathroom that has a tub

The Pattern of Requests

- Diagnoses behind supported meal plan requests
 - NUT ALLERGY

The Pattern of Requests

- Diagnoses behind unsupported meal plan requests
 - 6 GI: IBS, celiac disease, GERD, “N/V in DH”
 - 5 Endo/met: obesity, DM, PCO, hypoglycemia
 - 3 Psych: eating disorder, depression, “stress”
 - 1 Cardiovasc: hypertension
 - 1 Neurologic: migraine
 - 3 “vegetarian/vegan”

The Medical Perspective

Equity and non-interference

Our educational mission

- What makes sense medically
- What it means to sign a contract

Financial reality and the role the institution asks us to play

Evidence-based medicine

The Medical Perspective

- The Harris Faigel Criteria (1990's):
 1. Diagnosis
 2. Treatment plan
 3. How the proposed accommodation will fit into the overall treatment plan
 4. A list of peer-reviewed articles that demonstrate the effectiveness of the proposed accommodation

The Medical Perspective

- The evidence base is limited
- Acaricides, HEPA filters and allergy control bedding help with perennial allergic rhinitis but not with asthma
- Pet allergen control measures have not been shown to help asthma
- No evidence that living in one building vs another makes a difference

The Medical Perspective

- Humidity and particulate counts matter some for asthma, but temperature doesn't
- Cochrane Database of Systematic Reviews and BMJ's Clinical Evidence are two good sources for evidence-based treatment recommendations

HOWEVER

- It's not just about what makes sense medically
- We also have to follow the law
- And the regulations
- And the interpretation of the regulations

References

- Sheikh A, Hurwitz B, Shehata Y. House dust mite avoidance measures for perennial allergic rhinitis. *Cochrane Database of Systematic Reviews* 2007, Issue 1. Art. No.: CD001563. DOI: 10.1002/14651858.CD001563.pub2.
- Gøtzsche PC, Johansen HK. House dust mite control measures for asthma. *Cochrane Database of Systematic Reviews* 2008, Issue 2. Art. No.: CD001187. DOI: 10.1002/14651858.CD001187.pub3.
- Kilburn S, Lasserson TJ, McKean M. Pet allergen control measures for allergic asthma in children and adults. *Cochrane Database of Systematic Reviews* 2001, Issue 1. Art. No.: CD002989. DOI: 10.1002/14651858.CD002989.

Discussion

- Should the Health Service be providing care and making administrative decisions?
- Should mental health issues be handled differently from physical health issues?
- Should the records be part of the student's chart or kept in a separate file?
- Should someone familiar with ADA, etc review every request?

Discussion

- Should we support a student's request to pursue "alternative" therapy if the student is not on "standard" or evidence-based therapy?
- Should a student be penalized for making false claims in a request?
- Should students sign a statement holding the school harmless if a request is granted?



Administrative Requests Process at U of R

Coordinated by –
Michelle Livingston
Assistant to Director
University Health Service



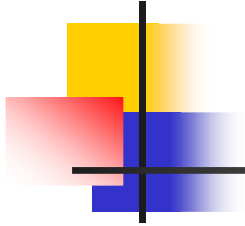
Types of Requests

- Single room
- Room in building with elevator
- Room in building on Central Campus
- Release from Housing Contract
- Change or release from Dining Contract



Student Must Provide...

- Letter from health care provider
 - Brief clinical summary – *include diagnosis*
 - Recommendation
 - Effective Date



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- Appointment scheduled with student if more information needed
 - Mental Health related issues are referred to University Counseling Center
 - Referral to Learning Assistance Services for students with ADD/LD issues



Recommendation

- Letter sent to Director of Residential Life; medical condition is not shared
- Letter sent to Dining Services
- Copies of letter
 - to student
 - UHS patient record
 - Admin Request files



Admin Request Form

- Patient demographics
- Details of request
- Medical problem
- Recommendation

ADMINISTRATIVE EVALUATION --- **DATE REQUEST RECEIVED:** _____

Student Name: _____ Date of Birth: _____

Student ID #: _____ College/Year in School: _____ Status: FT PT

Phone #: _____ Home #: _____

Address: CPU#: _____ MC Box #: _____ ESM Address: Box _____ 100 Gibbs St
Rochester, NY 14605

Home: _____

NATURE OF REQUEST:

- ___ Medical Inactive Status
- ___ Return from Medical Inactive Status
- ___ Academic Advising Request:

- ___ Housing Request / Dining Services
- ___ Other: _____

} *Academic Advising contacted*

___ *Ck when appropriate*

Medical information was not received. Letter will be sent to student requesting his/her MD send letter explaining medical problem, with diagnosis.

Date letter sent: _____

DETAILS OF STUDENT'S REQUEST: _____

DESCRIPTION OF MEDICAL PROBLEM: _____

Dx: _____

Does the condition substantially limit the student in major life activities?	<input type="checkbox"/> Yes <input type="checkbox"/> No Comment: _____
Is the requested accommodation needed to reduce the limitations on the student's activities caused by the impairment?	<input type="checkbox"/> Yes <input type="checkbox"/> No Comment: _____
Would other accommodations reduce the extent to which the impairment limits the student's ability to access University programs or services?	<input type="checkbox"/> Yes <input type="checkbox"/> No Comment: _____

ATTACHMENTS: Letter from Physician Chart Other: _____

RECOMMENDATION: _____

Case to be reviewed by University Counseling Center (UCC). Information faxed to UCC: _____ (date).

Date of Recommendation: _____ **Signature of Evaluator:** _____

Disposition & Recommendations:

- Decision and brief review of reasons for decision
- Document reviewed by Director
- Document suggestions that were communicated to the student

Signature of Director: _____

Patient Notified: Date: _____ (via...) Patient Parent Machine or Mailed: _____

Return To: Michelle Livingston

**University Health Service
University of Rochester**

ADMINISTRATIVE REQUESTS - RESIDENTIAL LIFE

UHS Staff Member: **Michelle Livingston**
 Assistant to the Director, UHS
 River Campus Office – Room 209
 585-275-2679

Requests for a change in a residence hall assignment or special consideration due to medical reasons: (room on campus, single room, room in building with an elevator, release from housing contract or requirement, etc.)

1. All requests should be referred to Michelle Livingston in the University Health Service. She will talk with the student (either by phone, in person, or e-mail) to explain the process and to determine whether the student will need to provide additional information before the request can be reviewed.

If the student is being seen at UHS:

Usually the student's medical chart will contain the information needed to do the review and make the recommendation.

If the student is being seen by a physician outside UHS:

The student will be asked to have his/her doctor send a clinical summary of the condition, treatment, status, and recommendations to Dr. Manchester. In some cases, copies of medical records may be needed.

If more information is needed to make a recommendation:

The student may be asked to schedule an appointment with a UHS physician. This request to schedule an appointment will be made by UHS after a review of the available information.

2. Once the necessary information is available, Dr. Manchester will review the request.
3. Once the recommendation has been made, Dr. Manchester will send a letter to the Director of River Campus Residential Life (or to the Director of Residential Life at the Eastman School of Music) with a copy to the patient, the patient's chart, and Administrative Request files. The letter will not give any information about the student's medical condition. Usually the letter will be sent within 3-4 days from the date when all the necessary information became available. (If there is a time deadline, UHS can call Residential Life to let them know the letter is being sent.)