

Compliance Training -
Section 504 and Title IX:
Current State and Recent
Changes to Institutional
Policy



GOMBOS | LEYTON
ATTORNEYS

Section 504

34 C.F.R. Part 104 (implementing Section 504 (implementing Section 504 of the Rehabilitation Act of 1973, 29 U.S. § 794 et seq)).

“No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.”





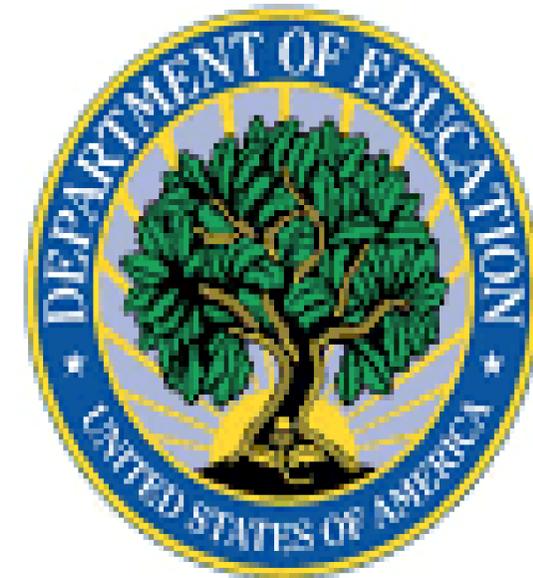
- All public and private elementary and secondary schools, school districts, colleges and universities (institutions of higher education or IHEs) receiving any federal financial assistance must comply with Section 504 and Title IX.
- Program Participation Agreement Terms and Conditions: The School certifies that it will comply with Section 504 and Title IX as a condition of eligibility and participation in Title IV federal financial aid programs.

Enforcement:

The U.S. Department of Education's Office for Civil Rights (OCR):

- Audits;
- Program Reviews; and
- Responding to Complaints About Alleged Discrimination.

U.S. Department of Education



Office for Civil Rights

Section 504 Protections

Qualified individuals with a disability may not, on the basis of that disability, be:

- Excluded from participation;
- Denied the benefits of;
- Otherwise subjected to discrimination; or
- Retaliated against.



General Expectations for Institutions

- No discrimination based on disability.
- Make academic adjustments as needed to ensure classroom or other program-related obligations do not discriminate.
- Ensure students with disabilities are not discriminated against based on the absence of auxiliary aids for assistance with sensory, manual, or speaking tasks.
- Provide a grievance procedure which allows for the prompt and equitable resolution of complaints.



Hypothetical 1

Gerry informs a staff member that he has a learning disability. As a result, he says that federal law requires the school to give him extra time to submit a final project. He says he has spoken to the Campus Director, who agrees but has not given him any paperwork. He says he also told his instructor that he needs more time, but they told him that he must turn in his assignment on the due date along with other students. Gerry tells the staff member that if they do not fix the problem immediately, he will file a complaint and get everyone involved fired.

- How should the staff member proceed?
- Can they tell the instructor to give Gerry extra time based on what the Campus Director said?
- Are the instructor and/or staff member required to make sure Gerry gets extra time?



NOTICE OF NON-DISCRIMINATION ON THE BASIS OF DISABILITY

- The School “does not discriminate on the basis of physical or mental disability” and prohibits “disability-based discrimination and harassment” as well as retaliation.
- This policy “covers admission, access, and treatment in the school’s programs and activities.”
- Disability-based harassment is “conduct which is sufficiently severe, pervasive, or persistent so as to interfere with or limit an individual’s ability to participate in or benefit from the services, activities, or opportunities offered by the school.



Student With a Disability

A student who:

- Has a physical or mental impairment which substantially limits one or more major life activities;
 - Major life activities is construed broadly:
 - 34 C.F.R. § 104.3(j)(2) – caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
 - Congressional examples – eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.
- Has a record of such impairment; or
- Is regarded as having such impairment.



Requesting Accommodations

- Engage with the Director of Education (who is also the Section 504/ADA Coordinator).
- Complete an Accommodations Request form.
- Provide appropriate medical documentation.
- Participate in the interactive process.
- Cooperate with the School to identify appropriate reasonable accommodations.



Hypothetical 2

Kendra tells her instructor that something in the classroom is off-gassing and causing physical reactions – fatigue and migraines – and significant anxiety. She says it could be caused by paint, carpet, cleaning products, or something in the HVAC system. Kendra gives the instructor a note from her orthopedist that indicates something in the classroom is causing Kendra anxiety. Kendra then informs the instructor that since, she has disclosed her disability, the law says that the instructor has to accommodate her by: (i) moving the class to another building or (ii) allowing her to attend class remotely.

- Does the instructor have an obligation to comply with Kendra's request? How about to identify an accommodation?
- How would you recommend the instructor proceed?
- What obstacles do you see for the Campus Director when assessing these circumstances?



Example Accommodations:

Based on the nature of the disability and the life activity it impacts, potential accommodations might include:

- Extra time for tests/exams.
- Readers/electronic readers.
- Videotext displays.
- Television enlargers.
- Open or closed captioning.
- Reaching device.
- Telecommunications devices for deaf persons.
- Reserved classroom seating.



Auxiliary Aids:

BUT, an institution need not provide “attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.”

- Examples include things like:
 - Wheelchairs;
 - Individually prescribed devices (e.g., prescription eyeglasses or hearing aids);
 - Readers for personal use or study; or
 - Services of a personal nature including assistance in eating, toileting, or dressing.



The Interactive Process

- Intended to be “a collaborative and interactive process between the student and the School.”
- Requires active involvement from both sides.
- May involve cooperation among units/departments when identifying accommodations.
- Ensures clarity for the School (including faculty and staff) and the student.



Complaints and Grievances

- Steps:
 - 1st – Consider informal resolution.
 - 2nd – Make a complaint to the Campus Director (in writing and clearly articulating the concern and desired resolution). CD reviews the circumstances and reaches a written decision.
 - 3rd – Appeal to the President who appoints a panel of two Senior Administrators who will decide the appeal.



Title IX of the Education Amendments of 1972

34 CFR 106.31(a) (implementing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq).

“...no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.”



INSTITUTIONAL POLICY REVISIONS.

Sexual harassment includes:

- *Quid pro quo* harassment (conditions an institutional aid, benefit, or service on participation in sexual conduct).
- Hostile environment harassment – conduct which, when viewed objectively, is so **severe or pervasive** that it limits a student's equal access to education.
 - One severe incident may be enough or multiple minor incidents.

Updated definition of Sexual Assault to include certain criminal acts as defined by the FBI.



Policy Updates



Confidential Employees –includes those whose duties are confidential under federal/state law (e.g., health care, spiritual advisement)

Reporting obligations –

- Employees with (i) authority to institute corrective measures or (ii) responsibility for administrative leadership, teaching or advising functions must report to the TIX Coordinator
- Employees without such responsibilities may report to the TIX Coordinator or provide the person who reported to them contact information for the TIX Coordinator and information about how to file a report.

Policy Updates



Grievance Procedures –

- Prompt and equitable resolution of complaints (students, employees , or others “participating or attempting to participate in an education program or activity”).
- Investigator and decision-maker are two separate and distinct roles.
 - Decision-maker may question parties and witnesses (written question or live hearing).
 - Parties have a right to propose questions to be asked of another party or witness.

Policy Updates



Notice to the parties will include:

- Procedures (including informal resolution).
- Name the parties involved;
- Identify the alleged improper conduct, including date and location.

Protections:

- Respondent presumed not responsible;
- Present and access relevant information;
- Prohibition against submitting false information; and
- Prohibition against retaliation (parties, witnesses, other participants).

Policy Updates

Investigation may be completed by one or more trained investigators (who may be the Title IX Coordinator).

Institution (through the decision-maker) determines whether evidence is relevant (and should be allowed in) or not relevant/impermissible.

- Impermissible evidence is that protected by privilege by Federal or State law; made or maintained by a physician, psychology, or other paraprofessional in connection with medical treatment; or which constitutes evidence of the Complainant's prior sexual conduct.



Policy Revisions



Definition of “relevant”:

- Evidence is relevant to an allegation of misconduct “when it may aid the decisionmaker in determining whether the alleged [misconduct] occurred.”
- Questions are relevant during a hearing when “they may aid in showing whether the alleged sex discrimination occurred.”



Policy Updates

Hearings:

- Preponderance of the evidence standard..
- Decisionmaker is someone other than the investigator.
- No party has a right to a live hearing (they are provided at the decision-maker's discretion).
- If a party or witness refuses to respond to questions that are relevant and permissible, the decision-maker may "choose to place less or no weight upon statements made by the party or witness."

Avoiding Bias and Conflicts of Interest

- The TIX Coordinator must ensure that the investigation, hearing, and appeal (if any) are administered promptly, fairly, and without bias against any party.
- A party wishing to raise the issue of a potential conflict of interest or bias must notify the Title IX Coordinator of the bias or conflict of interest within two (2) Business Days of being advised of the identity of the investigator or decision-maker.
- The TIX Coordinator will determine whether a conflict of interest exists.



Hypothetical 3

Kyle comes to your office and tells you that another student is making him feel uncomfortable in class. He reports that they went out on two dates, but he is not interested in a relationship with her. Kyle goes on to say that the young woman recently transferred into his class, has “run into him” at the computer lab three days in a row, and that he saw her car outside his apartment late last night. He reports that he has not attended class that week because of his concerns.

- What are your obligations regarding Kyle’s report?
- How would you recommend engaging with Kyle about this issue and his concern?
- What if Kyle tells you he does not want anyone else to get involved and he just needed to tell someone?





Questions
Answers

A photograph of a chalkboard with a wooden frame. The chalkboard is dark grey and has the words "Additional Resources" written in white, bold, sans-serif font. The text is centered on the board. The background behind the board is a light-colored wooden wall.

**Additional
Resources**

LVC Catalog Information

Federal Statements of Non- Discrimination, Complaint Policies, and Regulations:

EQUAL EDUCATIONAL OPPORTUNITY

LVC is an equal opportunity employer/program. The School is committed to providing an educational climate that is conducive to the personal and professional development of each individual. Students should be aware that discrimination and/or other harassment based on the age, color, ethnic background, disability, family status, gender, national origin, race, religion, sex, sexual orientation, or veteran status is unacceptable.

TITLE IX POLICY & PROCEDURES

Las Vegas College (The School) does not discriminate on the basis of sex in the education programs or activities that it operates, and it is required by Title IX of the Education Act and the Regulations of the Department of Education (34 C.F.R. § 106, *et. seq.*) not to discriminate in such a manner. The requirement not to discriminate in any education program or activity extends to admission to the School and employment opportunities with the School.

Pursuant to this policy and the procedures stated in the school's Title IX policy, the School must respond to alleged incidents of sexual harassment, as defined in the Title IX policy, that occurred in the School's education program or activity, against a person in the United States. The School's Title IX Policy is fully set forth in Addendum A to this catalog, and are posted on the LVC website at <https://lvcollege.edu/about/title-ix-information/>.

Contacting the Title IX Coordinator

Inquiries about the application of Title IX Regulations of the Department of Education may be referred to the School's Title IX Coordinator or the Assistant Secretary of the Department of Education, or both. The School's Title IX Coordinator can be contacted at:

Karen Vail-Roebuck, Campus Director
8410 Rafael Rivera Way
Las Vegas, NV 89113
(702) 567-1920
kroebuck@lvcollege.edu or TitleIXCoordinator@lvcollege.edu

The Assistant Secretary of the Department of Education can be contacted at:

U.S. Department of Education
Assistant Secretary for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
1-800-421-3481
OCR@ed.gov

NOTICE OF NON-DISCRIMINATION ON THE BASIS OF DISABILITY

In accordance with applicable Federal and State laws and School policy, including Title III of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 the school does not discriminate on the basis of physical or mental disability. Retaliation for participation in school procedures relating to complaints of discrimination is also prohibited. This nondiscrimination policy covers admission, access, and treatment in the school's programs and activities.

The school is committed to prohibiting disability-based discrimination and harassment, and retaliation, performing a prompt and equitable investigation of complaints alleging discrimination, and properly remedying discrimination when it occurs.

Examples of discrimination against students with disabilities include, but are not limited to: failure to engage with the student in a discussion of reasonable accommodations for a disclosed disability; failure to implement approved reasonable accommodations such as access to lecture transcripts and recordings, or extra time on tests; and exclusion of a qualified student from any course of study, or other educational program or activity because of the student's disability.

Disability-based harassment is conduct which is sufficiently severe, pervasive, or persistent so as to interfere with or limit an individual's ability to participate in or benefit from the services, activities, or opportunities offered by the school.

The school has issued a grievance procedure called: "*ADA and Section 504 Grievance Procedures*" and students who feel that they have been harassed or discriminated against for their disability should follow this procedure set forth below in this catalog.

Additionally, the school has issued a procedure for requesting reasonable accommodations under Title III of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 entitled "*Disability Accommodation Procedure*." This procedure is also set later in this catalog.

Any student wishing to request a reasonable accommodation should contact the school's Director of Education at 702-763-6708 or tiburdl@lvcollege.edu.

Students who wish to file a complaint in accordance with the *ADA and Section 504 Grievance Procedures* should contact the school's Campus Director at email: campusdirector@LVCollege.edu or 702-567-1920. Any other inquiries regarding the school's student-related nondiscrimination policies may also be directed to the school's Campus Director at campusdirector@LVCollege.edu.

ADA AND SECTION 504 GRIEVANCE PROCEDURES

Students, employees, or other members of the school community with concerns or complaints about the provision of requested disability accommodations, denials, or the accommodation process, or who have complaints involving compliance with approved accommodations by the school's faculty or staff, are directed to this complaint procedure. Although complainants are encouraged to follow the steps in this procedure, a complainant is not required to use this complaint procedure or to even proceed through each step below prior to submission of a complaint with the U.S. Department of Education, Office of Civil Rights.

Note about Discrimination Complaints: Individuals who believe they have been subject to discrimination based upon a disability, as described in Section 504 of the Rehabilitation Act of 1973 or The Americans with Disabilities Act of 1990, should report the matter to the school's Campus Director per the school's "*Notice of Non-Discrimination on the Basis of Disability*" Policy.

First Step: Consider resolving the matter informally

Before proceeding to the formal process, complainants are encouraged, but are not required to consider whether their concern can be effectively addressed by speaking directly with a staff or faculty member.

Second Step: Filing a Formal Complaint

When a concern is not resolved through the informal process, the complainant may file a formal complaint to school's Campus Director. The complaint must be in writing and must clearly articulate the complainant's concern as well as the desired resolution. The complainant will have the opportunity to present witnesses (in the form of signed statements) and other evidence in connection with this process. Formal complaints may be submitted to the Campus Director at email: campusdirector@LVCollege.edu or hand delivered to the office of the Campus Director at 8410

Rafael Rivera Way, Las Vegas, NV 89113. The Campus Director will review the submission, including all evidence submitted, and reach a determination, which the Campus Director shall communicate in writing to all involved parties within 30 business days of receipt of the formal complaint. The Campus Director's determination, when appropriate, will also include an assurance that steps will be taken to prevent recurrence of any discrimination, and will include appropriate remedial actions.

Third Step: Panel Review

In the event that a complainant wishes to appeal the Campus Director's determination. The student/employee must submit a written statement to the President that requests an appeal and sets forth the grounds for the appeal. The President will choose a Panel of two senior administrators at the vice president level or higher who are not employed at the complainant's primary campus who will review the appeal. The Panel will issue its decision in writing within 20 business days of the President's receipt of the appeal.

Response to Reasonable Accommodation Request

Name: [REDACTED]

Date: November 2, 2020

Sample
Letter from
LVC

[REDACTED]'s request for reasonable accommodation is being granted as indicated below:

1. Las Vegas College will provide [REDACTED] with hardcopies of his Nursing program textbooks in lieu the ebook format textbooks currently used by the program. These hardcopies will be provided with no additional cost to [REDACTED] beyond the regular price for Nursing program books included in [REDACTED]'s enrollment agreement. [REDACTED] should be aware of the following limitations and conditions, beyond the control of the school, that may, in time, limit the school's ability to completely satisfy his requested accommodation:
 - a. LVC will make every reasonable to effort to provide [REDACTED] with new hard or soft bound, printed hardcopies of the Nursing program textbooks. However, [REDACTED] should be aware that many major textbook publishers, including those used by the school, are scaling back printed book publishing with the intention of converting entirely to ebook publishing within the next one to two years. If LVC is unable to reasonably obtain new textbooks, the school will provide [REDACTED] with a reasonable alternative in a hardcopy format, such as a used textbook, a comparable edition, or a hardcopy printed from electronic resources by the school.
 - b. While LVC will make every effort to ensure that [REDACTED]'s hardcopy textbooks are ready and available for his use when needed, [REDACTED] needs to be aware that specially ordered books might take extra time to acquire, especially with printed books in shorter supply and the impact of the coronavirus pandemic on mail and shipping services.
 - c. [REDACTED] should be aware that there may be some learning materials associated with the Nursing program textbooks, such as interactive supplemental components to online labs, for which there is no published hardcopy version. LVC understands that, in these scenarios and others, [REDACTED]'s specific needs may evolve as he progresses through the Nursing program. The school will make every reasonable effort to meet those evolving needs. An example of such might include providing computer print outs of some of the online material, where reasonably possible, to assist [REDACTED] as he works with the interactive online textbook supplement. [REDACTED] and his instructors should communicate closely on any such issues as soon as the need becomes apparent.
2. A copy of the Work/School Certificate from the USC Roski Eye Institute, Department of Ophthalmology, dated 10/22/2020 that [REDACTED] has provided indicating this needed accommodation(s) needs to remain on file with LVC.



Kristen Brown
Compliance Officer
Mikhail Education

I acknowledge and agree.

Student Signature

Date

Student Printed Name

Response to Reasonable Accommodation Request

Name: [REDACTED]

Date: **March 30, 2024**

[REDACTED]'s request for reasonable accommodation, relating to her Request for Reasonable Accommodations Form dated March 15, 2024, is being granted as indicated below:

1. During [REDACTED]'s enrollment period she will be allowed extra time, up to 1.5 times the scheduled quiz or exam length, on her scheduled quizzes and exams.
2. In order to help ensure that [REDACTED] is able to use her extra testing time accommodation with minimal to no disruption to her ability to participate in lectures and other classroom activities, [REDACTED]'s accommodations will take different forms for different courses. Testing arrangements may include, but are not limited to, arriving to class early to begin her exam, continuing her exam through a break, and/or taking her exam in the library or another quiet location, possibly at an alternate time. [REDACTED]'s instructors will let her know about specific procedures for their exams and quizzes ahead of time.
3. If [REDACTED] chooses not to exercise her extra testing time accommodation at any time for a scheduled exam or quiz, she understands that she waives her right to that accommodation for the duration of that specific exam or quiz only and agrees that she will not contest the grade for that specific exam or quiz based on the waived accommodation.
4. Additionally, [REDACTED] is allowed to use a calculator on assignments, quizzes, and exams where calculations are required.
5. LVC is not responsible and has no ability for granting accommodations related to testing by third parties not associated with LVC. For example, if [REDACTED] decides to sit for the National Certified ECG Technician (NCET) exam or the National Certified Phlebotomy Technician (NCPT) exam, she should be aware that these accommodations may or may not be granted during these exams or any other professional examinations she may choose to pursue outside of LVC, and that, if granted, the accommodations may not take the same form she is accustomed to at LVC. In all cases, the organization administering the examination will have their own rules and application processes concerning reasonable accommodations. [REDACTED] must apply for her accommodations with the organization administering the examination herself and follow that organization's instructions.
6. A copy of the Accommodations and Modifications page that [REDACTED] has provided from her Clark County School District Individualized Educational Program (IEP), dated 2/12/2014, indicating these needed accommodations must remain on file with LVC. If [REDACTED] requests accommodations for any professional examinations she may choose to pursue outside of LVC, the third-party organizations administering those examinations will most likely also require a copy of this same paperwork.

Reasonable accommodations at LVC are based on an interactive process between the student and the school. If your needs should change or if additional needs become apparent to you as you continue with your program, you are welcome to contact Director of Education Tieasha Liburd to complete another accommodations request. Should you disagree with the response in this letter, we may continue with the interactive process if you provide me with additional written input no later than five days from the date of this letter. In the alternative, you also have the right to appeal no later than five days from the date of this letter. I can provide you with details regarding our appeals process upon your written request.



Kristen Brown
Mikhail Education Compliance Officer

I acknowledge and agree.

Student Signature

Date

Student Printed Name